



\$~17 and 18

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. 755/2026 & I.A. 11478/2026

JSIW INFRASTRUCTURE PVT LTD

.....Petitioner

Through: Mr. Aayush Agarwala and Ms.
Utkarshani Srivastava, Advs.

versus

OIL AND NATURAL GAS CORPORATION LTD. Respondent

Through: Ms. Surbhi Gupta, Adv.

18

+ ARB.P. 757/2026 & I.A. 11519/2026

JSIW INFRASTRUCTURE PVT LTD

.....Petitioner

Through: Mr. Aayush Agarwala and Ms.
Utkarshani Srivastava, Advs.

versus

OIL AND NATURAL GAS CORPORATION LTD Respondent

Through: Ms. Surbhi Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

24.07.2026

%

1. The present petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.
2. Since the petitions arise out of similar contracts and involve common issues the brief facts are taken from ARB.P. 755/2026. The respondent invited bids in 2008 for a two pipe line replacement project at Ankleshwar



Asset on lump sum basis. The petitioner was a successful bidder and a Notification of Award dated 25.06.2008 was issued. Disputes between the parties were referred to the Outside Expert Committee and thereafter to arbitration. The first arbitral award in favour of the petitioner was set aside and the matter was referred to a sole arbitrator. The sole arbitrator rejected the claims of the petitioner. The award was set aside by this Court and the judgment was upheld in appeal. Special Leave Petition filed by the respondent was dismissed by the Supreme Court on 30.01.2026. The petitioner thereafter invoked arbitration afresh by notice dated 31.01.2026 under clause 1.3.2 of the General Conditions of Contract (for short 'GCC') and proposed the appointment of a sole arbitrator. The relevant portion of clause 1.3.2 is reproduced below:

1.3.2 Arbitration:

Except as otherwise provided elsewhere in the contract, If any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same shall be referred to Arbitration as provided hereunder:

1. A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days' notice to the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter. If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupees for the purpose of constitution of the arbitral tribunal.



2. The number of the arbitrators and the appointing authority will be as under:

Claim amount (excluding claim for interest and counter claim, if any	Number Of Arbitrator	Appointi ng Authority
Above Rs. 5 Crore	3 Arbitrators	one arbitrator by each party and 3rd arbitrator, who shall be presiding arbitrator by the two arbitrators.

3. The parties agree that they shall appoint only those persons as arbitrators who accept the conditions of this arbitration clause. No person shall be appointed as arbitrator or presiding arbitrator who does not accept the conditions of this arbitration clause.

4. Parties agree that there will be no objection If the Arbitrator appointed holds equity shares of ONGC and/or Is. a retired officer of ONGC / any PSU. However, neither party shall appoint its serving employee as arbitrator.

5. If any of the Arbitrators so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, It shall be lawful for the concerned party/arbitrators to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall proceed de novo.

6. Parties agree that neither party shall be entitled for any prference or pendent-lite interest on its claims. Parties agree that any claim for such interest made by any party shall be void.

7. The arbitral tribunal shall make and publish the award within



time stipulated as under:

Amount of Claims and Counter Claims (excluding interest)	Period for making and publishing of the award (counted from the date of first meeting of the arbitrator):
Upto Rs. 5 Crore	Within 8 months
Above Rs. 5 Crore	Within 12 months

The above time limits can be extended by the arbitrator, for reasons to be recorded in writing, with the consent of the parties.

8. Arbitrator shall be paid fees at the following rates:

Amount of Claims and Counter Claims	Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) payable to each arbitrator (to be shared equally by the parties)
Upto Rs. 50 lac	Rs. 7,500 per meeting subject to a ceiling of Rs. 75,000/-
Above Rs 50 lac to Rs 1 crore	Rs. 90,000· plus Rs. 1,200 per lac or a part thereof subject to a ceiling of Rs. 1,50,000-
Above Rs, 1 Crore and upto Rs. 5 Crores	Rs. 1,50,000· plus Rs. 22,500-per crore or a part there of subject to a ceiling of Rs. 240,000
Above Rs. 5 Crores and upto Rs. 10 Crores.	Rs. 2,40,000- plus Rs, 15,000-per crore or a part there of subject to a ceiling of Rs. 3,15,000
Above Rs. 10 crores	Rs. 3,15, 000 plus Rs. 12,000-per crore or part there of subject to a ceiling of Rs. 10,00000-

For the disputes above Rs. 50 lacs, the Arbitrators shall be entitled to an additional amount @ 20% of the fee payable as per



the above fee structure.

9. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to conciliation, the arbitrators shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrators shall be determined as under:

(I) 25 % of the fees if the claimant has not submitted statement

of claim.

(II) 50 % of the fees if the award is pending;

10. Each party shall pay its share of arbitrator's fees in stages as under:-

(I) 25% of the fees on filing of reply to the statement of claims.

(II) 25% of the fees on completion of evidence.

(III) Balance 50% at the time when award is given to the parties,

11. Each party shall be responsible to make arrangements for the

travel and stay etc. of the arbitrator appointed by it. Claimant shall also be responsible for making arrangements for travel I stay arrangements for the Presiding Arbitrator and the expenses incurred shall be shared equally by the parties.

In case of sole arbitrator, ONGC shall make all necessary arrangements for his travel stay and the expenses incurred shall be shared equally by the parties.

12. The Arbitration shall be held at Delhi the place from where the contract has been awarded. However, parties to the contract can agree for a different place for the convenience of all concerned.



13. The Arbitrator(s) shall give reasoned and speaking award and it shall be final and binding on the parties.

14. Subject to aforesaid, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or reenactment thereof shall apply to the arbitration proceedings under this clause.

3. Learned counsel for the petitioner contends that after amendment to Section 12(5) of the Act the respondent cannot exercise the right to appoint the arbitrator.

4. The Supreme Court in ***Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd. and Ors.***, 2025 SCC OnLine SC 2578 dealt with an arbitration clause providing that no person other than a person appointed by the Managing Director or administrative head of the Nigam should act as arbitrator and if such appointment is not possible then the matter is not arbitrable. It was held that the exclusive power with the contractee to appoint arbitrator is unenforceable and should be severed but the agreement of arbitration survives. The portion of the clause that for any reason the arbitration by the arbitrator appointed by the contractee is not possible the matter shall not be referred to arbitration at all violates Section 18 of the Act. The relevant paragraphs of the judgment are reproduced below:

“12.12. Accordingly, the portion of Clause 25 that vests exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

12.14. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in CORE II, arbitral



appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

12.15. The sub-clause in Clause 25 which provides that “if for any reason the matter shall not be referred to arbitration” is vague, uncertain, and arbitrary. The expression “for any reason” confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

12.16. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;
- (iii) The unilateral and exclusionary appointment mechanism is void and severable; and
- (iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

12.17. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside.”

5. Learned counsel for the respondent vehemently contends that the parties should be referred for institutional arbitration.

6. Learned counsel for the petitioner is not agreeable and presses that this court should exercise the jurisdiction for the appointment of the arbitrator.

4. In view of the law laid down in ***Hindustan Construction Company Ltd.*** (supra) the arbitration agreement between the parties shall be enforceable qua that extent and not that the appointment of the arbitrator



shall be made by the respondent.

5. The parties shall be at liberty to raise all the contentions before the arbitrator.

6. Accordingly, the petitions are allowed by appointing Mr. Mohammad Rafiq, former Chief Justice of the Meghalaya High Court (Mobile No.941405777) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

7. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (DIAC). Fee of the Arbitrator shall be fixed as per fee schedule.

8. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

9. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties and it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

10. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

JULY 24, 2026/Pa