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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 22nd September, 2026*# **CNR No. DLHC010446942026**+ **ARB.P. 1684/2026****M/S MULTI TECH CONSTRUCTION CO. Petitioner**Through: **Mr. Dhiraj Sachdeva, Advocate.**

versus

PUBLIC WORKS DEPARTMENT, GNCTD RespondentThrough: **Ms. Rachita Garg, Advocate.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. To the extent necessary, the facts are that Respondent invited tenders for construction of 162 Nos. of additional SPS classrooms in different schools under the Delhi Government as also for works such as water supply, sanitary installations, firefighting systems etc. Petitioner's tender was accepted and work was awarded with stipulated date of completion being 15.08.2019. As per the Petitioner, the work was delayed due to defaults of and hindrances by the Respondent, owing to which extensions were granted. On 20.02.2023, Respondent released payment against the Final Bill but huge amounts remained outstanding. Petitioner raised demands but the same were rejected on 13.10.2023. On 20.08.2024, Petitioner sent notice invoking

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arbitration under arbitration Clause 25 of GCC. Respondent failed to appoint the Arbitrator and hence, this petition was filed. Learned counsel for the Petitioner submits that Clause 25 of GCC provides for reference of disputes arising out of the contract in question to arbitration and therefore, there can be no impediment in appointment of the Arbitrator. He, however, questions the appointment by Chief Engineer, CPWD or if there is no Chief Engineer, by the Additional Director General of CPWD of the concerned region or Director General, CPWD, in the absence of the ADG on the ground that this would amount to unilateral appointment in the teeth of the judgments in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760*** and ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) a Joint Venture Company, 2024 SCC OnLine SC 3219***.

3. Learned counsel for the Respondent, fairly does not dispute the existence of the Arbitration Agreement between the parties and consequently, reference of the disputes. She, however, submits that appointment of the Sole Arbitrator is the prerogative of the Officer designated in Clause 25 of GCC and therefore, the appointment ought to be left to be made in accordance with the said Clause.

4. It is no longer *res integra* that the scope of examination in a petition under Section 11(6) of 1996 Act is confined to a *prima facie* enquiry of existence of Arbitration Agreement. In ***SBI General Insurance Company Limited v. Krish Spinning, (2024) 12 SCC 1***, the Supreme Court delineated the contours of judicial intervention at the stage of Section 11 of 1996 Act, observing that the scope of examination is confined to existence of Arbitration Agreement and the scrutiny does not include a contested or



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laborious enquiry, which is to be left to the Arbitral Tribunal and that this approach serves twofold purposes: (a) allows the Referral Court to weed out non-existent arbitration agreements; and (b) protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence under Section 16, in depth.

5. The contest in the present petition by the Respondent is with regard to the Appointing Authority of the Sole Arbitrator as stipulated in Clause 25 of GCC. For ready reference, Clause 25 is extracted hereunder:-

“..... If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator. It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration. (ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal. It is also a term of this contract that no person, other than a person appointed by such Chief Engineer CPWD or Additional Director General or Director General, CPWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final



bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-., the arbitrator shall give reasons for the award. It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

6. The moot question that arises for consideration is whether the procedure envisaged in Clause 25 of GCC, wherein Chief Engineer/ADG/DG is empowered to appoint a Sole Arbitrator, is tenable in law and in my view, this question need not detain the Court as it stands settled in plethora of judgments. In **Perkins (supra)**, the Supreme Court held that even where the Managing Director of a party to the Arbitration Agreement does not himself act as an Arbitrator but is authorised to appoint any other person of his choice or discretion, considering that he will have an interest in the outcome of the dispute, he would be disentitled to make the appointment. The Supreme Court emphasised on: (a) party autonomy; and (b) likelihood of bias of the appointing authority having interest in the outcome or result of the dispute and relevant passage is as follows:-



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“20. We thus have two categories of cases. The first, similar to the one dealt with in *TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377: (2017) 4 SCC (Civ) 72]* where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in *TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]* , all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.”

7. The Supreme Court referred to the judgment in ***TRF Limited v. Energo Engineering Projects Limited, (2017) 8 SCC 377***, where the Managing Director himself was a named Arbitrator and found him to be ineligible/incompetent on account of interest he would have in the outcome of the dispute, observing that similar invalidity would apply, where the ineligible person appoints another Arbitrator. This principle was reaffirmed by the Supreme Court in ***Bharat Broadband Network Limited v. United Telecoms Limited, (2019) 5 SCC 755***. In ***Proddatur Cable TV Digi Services v. Siti Cable Network Limited, 2020 SCC OnLine Del 350***, this Court held that the unilateral appointment of the arbitrator by one party to the contract does not meet the test of impartiality and independence under Section 12(5) of 1996 Act, relying on the judgment in ***Perkins (supra)***.



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8. The instant case is squarely covered by the decision of this Court in ***Mahavir Prasad Gupta and Sons v. Government of NCT of Delhi, in ARB.P. 716/2026***, decided on 11.08.2026, where Court was considering a petition under Section 11 (5) and (6) of 1996 Act and same Arbitration Clause 25 of GCC, contemplating appointment of Sole Arbitrator by Chief Engineer, CPWD. Court appointed the Sole Arbitrator holding that official of a party to the dispute can neither be appointed as an Arbitrator nor appoint an Arbitrator and this portion of Clause 25 permitting the Chief Engineer to appoint the Arbitrator is void *albeit* it will not dent the substantive agreement between the parties to refer the disputes to arbitration. Court relied on the judgment of the Supreme Court in ***Hindustan Construction Company Limited v. Bihar Rajya Pul Nirman Nigam Limited and Others, 2025 SCC OnLine SC 2578***, where the Supreme Court held that the portion of the arbitration clause which vests exclusive appointment power in one party must be severed as void and unenforceable. Therefore, it is now authoritatively settled that unilateral appointment of Arbitrators by parties interested in the outcome of the dispute is an anathema to 1996 Act and in such cases, it is incumbent on the Court to appoint an independent and impartial Arbitrator, when approached for appointment under Section 11 (6) of 1996 Act.

9. There can be no quarrel that appointment of Arbitrators by parties to the dispute will certainly lead to a possibility of bias and as held by the Supreme Court in ***CORE (supra)***, the party appointing the Arbitrator will have control and will be in a dominating position to chart the course of action of the arbitration proceedings to the prejudice of the other party. Unilateral appointment clause is therefore inherently exclusionary and



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violates the principles of equal treatment of parties and procedural equality. The whole objective of taking recourse to arbitration as an alternate dispute resolution mechanism is impartial resolution of disputes between the parties and unilateral appointment clauses are in the teeth of this objective. In light of the wealth of judicial precedents on this subject, Clause 25 of GCC, to the extent it empowers the Respondent to appoint the Sole Arbitrator is void and unenforceable *albeit* to the extent the clause is an expression of the intent of the parties to arbitrate, it will remain enforceable and valid.

10. Accordingly, this petition is allowed, appointing Mr. Abhilash Mathur, Advocate (Mobile No. 9811041536) as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator is fixed as per fee schedule under DIAC (Administrative Costs & Arbitrators' Fees) Rules, 2018.

11. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

12. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

13. It is left open to the Respondent to prefer a counter claim, if any, before the learned Arbitrator.

14. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 22, 2026

S.Sharma