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

CNR No. DLHC010763742025

+ **ARB.P. 1630/2025**

M/S D R SHARMA AND SONS

.....Petitioner

Through: **Mr. Bankim Garg and Mr. Rachit Wadhwa, Advocates.**

versus

UNION OF INDIA

.....Respondent

Through: **Mr. Bhagvan Swarup Shukla, CGSC with Mr. Mukesh Pandey, Mr. Anupam Pandey, Ms. Saumya Srivastav and Ms. Shreya Mishra, Advocates for UOI.**

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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29.09.2026

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “*Act*”) seeking appointment of a sole arbitrator for adjudication of disputes arising from Agreement No.154/EE/GCD/2017-18 for “*Comprehensive Repair to Shipra Tower of Central Excise Department at Vaishali, Ghaziabad including Electrical Works*”.

2. It is stated that the respondent awarded the work to the petitioner in the month of March, 2018 and the execution whereof was severely hindered due to delays and non-handing over of the site allegedly by the respondents. It is stated that despite an extension of time being granted, the respondents allegedly failed to make timely payments and wrongfully deducted amounts from the petitioner’s bills.

3. The petitioner claims that in order to address its disputes the petitioner



invoked the Dispute Redressal Committee (hereinafter referred to as the “DRC”) mechanism. The petitioner further states that though the DRC was constituted and the petitioner submitted its claims, the DRC failed to decide the matter within the stipulated 90-day period, leading to filing of the present petition. It is stated that the mandatory notice under Section 21 of the Act was also issued by the petitioner *vide* its notice dated 01.09.2025.

4. Mr. Bhagvan Swarup Shukla, learned CGSC appears on behalf of the respondent/Union of India and states that the DRC is still in seisin of the said claims which have been filed by the petitioner and the present petition is premature to that extent. He invites attention of this Court to the documents annexed to the counter affidavit at page 9 to submit that despite the DRC having addressed its concern to the petitioner, requiring the petitioner to file certain documents for the purposes of the DRC to assess and ascertain the claims of the petitioner, the petitioner failed to do so. He further states, by inviting attention of this Court to the letter dated 09.04.2025 which is a notice again issued by the DRC to the petitioner, requiring the petitioner yet again to submit additional documents in support of its claim which was to be adjudicated by the DRC.

5. Mr. Shukla, learned CGSC, claims that despite repeated letters, it is the petitioner who has not complied with the requirements of the DRC proceedings and hence the present petition, without first the DRC resolving the issue, is premature and not maintainable.

6. Countering the said argument, learned counsel for the petitioner invites attention of this Court to the e-mail dated 19.05.2025 issued by the petitioner consequent upon having received the notices referred to by Mr. Shukla. The said e-mail is extracted hereunder for the purpose of clarity:

“Dear Sir/Madam,

This is in continuation of our earlier submission dated 13.05.2025, and



pursuant to the meeting held on 15.05.2025 before the Departmental Redressal Committee (DRC), constituted under Clause 25 of the General Conditions of Contract (GCC).

During the said meeting, the Claimant, M/s D R Sharma & Sons, presented and explained in detail the Statement of Claim pertaining to the work titled:

“Comprehensive Repair to Shipra Tower of Central Excise Department at Vaishali, Ghaziabad including Electrical Work” under Agreement No. 154/EE/GCD/2017-18

Based on the Committee's observations and suggestions during the meeting, the Claimant was advised to incorporate additional details and clarifications in support of the claims raised. Accordingly, and within the time of a few days granted by the Committee, please find attached the Revised Statement of Claim (Claim Nos. 1 to 14) along with supporting annexures/documents for your kind consideration.

We kindly request you to acknowledge receipt of the revised submission and confirm that the same has been placed before the Committee. We also request to be informed of the next date of hearing or any further requirements, if any, from our end.

Should you require any clarification or additional information, please feel free to contact us.”

7. He further states that the clarification as sought by the DRC in the letters referred to above were duly answered by the petitioner *vide* this e-mail consequent where to no further notice of consideration of hearing by the DRC was received by the petitioner till date. It is due to this failure, that the petitioner was constrained to approach this Court.

8. This Court has heard the learned counsel for the parties and perused the records.

9. It is admitted by the petitioner that the claims were placed before the DRC post invocation of the said provision of the agreement, consequent where to, according to the petitioner, all the required documents in support of the claims were already placed before the DRC through the e-mail dated 19.05.2025. It is stated that post the said e-mail, the petitioner having waited for a period of almost three months, issued a notice under Section 21 of the Act, invoking arbitration *vide* the notice dated 01.09.2025. The DRC appears to



have issued a further letter dated 09.09.2025 requiring the petitioner to yet again send certain supporting documents.

10. Since the petitioner had already sent a notice under Section 21 of the Act invoking arbitration, it did not participate in further proceedings of the DRC. It is noted that *vide* the minutes of the meeting dated 10.12.2025 under the cover letter dated 17.12.2025, the DRC has noted that the petitioner had already invoked arbitration before this Court.

11. Having regard to the aforesaid, it appears that the petitioner had submitted to the jurisdiction of the DRC by submitting its claims before the DRC, however, post the e-mail dated 19.05.2025 enclosing the required information as sought by the DRC, the DRC does not appear to have completed the said proceedings.

12. The petitioner after having waited for almost three months had finally invoked arbitration, constraining him thereafter, to file the present petition.

13. The aforesaid facts indicate that the DRC was unable to complete and conclude the proceedings within the 90-day period though there is a resistance on behalf of the DRC on the ground that the required documents were not furnished by the petitioner.

14. Be that as it may, since the DRC proceedings did commence, however, could not conclude within the period of 90 days, there would be no justification in relegating the petitioner back to the stage of the claims being considered by the DRC. The procedure prescribed for the purposes of resolution of the disputes by DRC and failing which invocation of arbitration, is contained and encapsulated in Clause 25 of the General Conditions of Contract, which is extracted hereunder:

“CLAUSE 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions



here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer's decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. 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 [X] 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 there be no Chief Engineer, the Additional Director General of the concerned region, CPWD or if there be no



Additional Director General, the Special Director General or the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act, 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 Special 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 re-enactment 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 claim by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of this 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."

15. The petitioner, after having approached the DRC and finding that the Disputes Resolution Mechanism has not worked out within the stipulated time,



had also issued a notice under Section 21 of the Act dated 01.09.2025. The relevant paragraphs whereof are extracted hereunder:

"8. In light of the above, we hereby invoke Clause 25 of the General Conditions of Contract. As required under the said clause, we submitted our claims to the DRC following due procedure. Despite filing the amended Statement of Claims on 19.05.2025, the DRC failed to decide the matter within the stipulated 90-day period. "The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. 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 adjudication by the arbitrator." In view of this inaction and our continued dissatisfaction, we are invoking arbitration in accordance with Clause 25 and hereby issue this notice seeking appointment of an arbitrator.

9. That despite repeated representations and complete compliance with the directions of the Dispute Redressal Committee (DRC), the disputes remain unresolved. A detailed statement of our claims is annexed hereto as Annexure 'A', amounting to approximately ₹4,05,08,351/-.

10. Without prejudice to our rights and contentions, and with a view to expediting the constitution of the Arbitral Tribunal, we respectfully propose the following names of retired engineers/arbitrators having relevant experience in CPWD and infrastructure contracts, for your kind consideration for appointment as Sole Arbitrator:

- a. Sh. Dinesh Kumar, Former Spl. Director General, CPWD*
- b. Sh. S. K. Tandon, Additional District and Sessions Judge (Retd.)*
- c. Sh. Amarendra Kumar Sinha, Former ADG, CPWD*

11. It is brought to your attention that the arbitration clause in the contract is now subject to the overriding effect of the mandatory provisions of the Arbitration and Conciliation Act, 1996. In view of the statutory amendments and the judgment of the Hon'ble Supreme Court in TRF Ltd. v. Energo Engineering Projects Ltd., any person who has a relationship with the appointing authority (i.e., any serving CPWD officer) is statutorily disqualified from acting as arbitrator under Section 12(5) read with the Seventh Schedule of the Act. This ineligibility is non-derogable."

16. In terms of the judgement of the Supreme Court in ***SBI General Insurance Company Limited vs. Krish Spinning, (2024) 12 SCC 1***, it is clear that the Court appointing an arbitrator under Section 11 of the Act, is not



required to delve into the merits of the matter and only satisfy itself as to the existence of a valid arbitration agreement executed between the parties.

17. Having regard to the aforesaid and finding that there is no dispute so far as Clause 25 is concerned, this Court is satisfied that the parties are *ad idem* on the existence of the valid arbitration agreement. The Court is also satisfied that the prescribed procedure under Clause 25 of the GCC of first invoking the DRC mechanism has also been correctly invoked by the petitioner, however, on certain accounts the DRC was unable to complete the procedure. This amply suggests that the procedure prescribed under Clause 25 had been invoked and only the failure of DRC from completing the procedure within the stipulated time, that arbitration has been invoked, thus, the requirement of Clause 25 stands completed.

18. In view thereof and in pursuance of the procedure prescribed in Clause 25 of the Agreement, the present petition is allowed and the following directions are passed:

19. Having regard thereto, the petition is allowed and the following directions are passed:

- i) Mr Alok Agarwal, DHJS (Retd.) (Mob. No. 9910384729) appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties,



including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

- vi) The petitioner shall approach the learned Arbitrator within two weeks from today.

TUSHAR RAO GEDELA, J

SEPTEMBER 29, 2026

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