

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

ARBITRATION APPLICATION Nos: 59, 60, 61 and 63 OF 2024

Arbitration Application No. 59 of 2024

Between:

M/s BNB Infracon India Private Limited, having its registered office at 8-3-833/21/A, Srinagar Colony, Hyderabad. Telangana - 500073. Rep. by its Managing Director Mr. Abishek Valluru.
...APPLICANT

AND

1. South Central Railway, O/o Divisional Railway Manager (Works), 2nd Floor, Sanchalan Bhavan, Secunderabad- 500003. Rep by Authorized Person
2. HDFC Bank Limited, Bank House, Wholesale Banking Operations, 6-3-244/A & 246, 2nd Floor, Road No.1, Banjara Hills, Hyderabad, Telangana - 500034.

...RESPONDENTS

Arbitration Application Under Sub-Section (5 & 6) of Section 11 of the Arbitration and Conciliation Act, 1996 read with para (3) (i) (c) of Scheme for appoint of Arbitrators, 2006 praying that this Hon'ble Court may be pleased to appoint an Independent Arbitrator to resolve the disputes between the Applicant and Respondents as per the provisions of Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 .

Counsel for the Petitioner: SRI M. SRIDHAR

Counsel for the Respondent No.1 : SRI V. T. KALYAN

Counsel for the Respondent No. 2 : SRI B. MOHAN

ARBITRATION APPLICATION NO: 60 OF 2024

Between:

M/s BNB Infracon India Private Limited, having its registered office at 8-3-833/21/A, Srinagar Colony, Hyderabad. Telangana-500073. Rep. by its Managing Director Mr. Abishek Valluru
...APPLICANT

AND

1. South Central Railway, O/o Divisional Railway Manager (Works), 2nd Floor, Sanchalan Bhavan. Secunderabad- 500003. Rep. by Authorized Person
2. HDFC Bank Limited, Bank House, Wholesale Banking Operations, 6-3-244/A and 246. 2nd Floor. Road No.1, Banjara Hills. Hyderabad, Telangana- 500034

...RESPONDENTS

Arbitration Application Under Sub-Section (5 & 6) of Section 11 of the Arbitration and Conciliation Act, 1996 read with para (3) (i) (c) of Scheme for appoint of Arbitrators, 2006 praying that this Hon'ble Court may be pleased to appoint an Independent Arbitrator to resolve the disputes between the Applicant and Respondents as per the provisions of Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996.

Counsel for the Applicant :SRI. M. SRIDHAR

Counsel for the Respondent No.1 : SRI V. T. KALYAN

Counsel for the Respondent No. 2 : SRI B. MOHAN

ARBITRATION APPLICATION NO: 61 OF 2024

Between:

M/s BNB Infracon India Private Limited, having its registered office at 8-3-833/21/A, Srinagar Colony, Hyderabad. Telangana-500073 Rep. by its Managing Director . Abishek Valluru.
...APPLICANT

AND

1. South Central Railway, O/o Divisional Railway Manager (Works), 2nd Floor, Sanchalan Bhavan, Secunderabad- 500003. Rep. by Authorized Person
2. HDFC Bank Limited, Bank House, Wholesale Banking Operations, 6-3-244/A and 246, 2nd Floor, Road No.1, Banjara Hills, Hyderabad, Telangana- 500034.

...RESPONDENTS

Arbitration Application Under Sub-Section (5 & 6) of Section 11 of the Arbitration and Conciliation Act, 1996 read with para (3) (i) (c) of Scheme for appoint of Arbitrators, 2006 praying that this Hon'ble Court may be pleased to

appoint an Independent Arbitrator to resolve the disputes between the Applicant and Respondents as per the provisions of Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 .

Counsel for the Applicant :SRI. M. SRIDHAR

Counsel for the Respondent No. 1 : SRI V. T. KALYAN

Counsel for the Respondent No. 2: SRI B. MOHAN

ARBITRATION APPLICATION NO: 63 OF 2024

Between:

M/s BNB Infracon India Private Limited., having its registered office at 8-3-833/21/A, Srinagar Colony, Hyderabad. Telangana-500073. Rep. by its Managing Director Mr. Abishek Valluru
...APPLICANT

AND

1. South Central Railway, O/o Divisional Railway Manager (Works), 2nd Floor, Sanchalan Bhavan, Secunderabad- 500003. Rep. by Authorized Person
2. HDFC Bank Limited, Bank House, Wholesale Banking Operations, 6-3-244/A and 246, 2nd Floor, Road No.1, Banjara Hills, Hyderabad, Telangana-500034.
...RESPONDENTS

Arbitration Application Under Sub-Section (5 & 6) of Section 11 of the Arbitration and Conciliation Act, 1996 read with para (3) (i) (c) of Scheme for appoint of Arbitrators, 2006 praying that this Hon'ble Court may be pleased to appoint an Independent Arbitrator to resolve the disputes between the Applicant and Respondents as per the provisions of Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996.

Counsel for the Applicant :SRI. M. SRIDHAR

Counsel for the Respondent No.1 : SRI V. T. KALYAN

Counsel for the Respondent No. 2: SRI B. MOHAN

The Court made the following COMMON ORDER:

HON'BLE SRI JUSTICE K. LAKSHMAN**ARBITRATION APPLICATION NOS.59, 60, 61 AND 63 OF 2024****COMMON ORDER:**

The parties and lis involved in all the three applications are common and therefore, they were being heard together and disposed of by way of this **common order:-**

2. Heard Sri M. Sridhar, learned counsel for the Applicants, Sri V.T.Kalyan, learned counsel appearing for respondent and Sri B.Mohan, learned counsel appearing for 2nd respondent/formal party.

3. These applications are filed under Section 11(5 and 6)) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') to appoint an Arbitrator to adjudicate the disputes between the parties.

CONTENTIONS OF THE APPLICANT:

4. The applicant is a private limited company and engaged in the business of construction and real estate activities. 1st respondent has issued e-tender notice dated 05.11.2019 for proposed construction of quarters and the applicant having participated in the said tender, stood as a successful bidder.

5. The details of the tender notice, nature of work, costs of work, date of letter of acceptance are mentioned in the tabular form:-

A.A. No.	Date of E-Tender	Nature of work,	Costs of work accepted Rs.	Date of letter of acceptance
59/ 24	05.11.2019	constructions of sw-1 construction of Type -IV quarters at Bellampally-2Nos, sw-2 construction of Type-II Quarters at Bellampally-10 Nos	2,38,13,215.58	10.03.2023
60/ 24	05.11.2019	construction of Type-II Quarters 8 numbers at Ramagundam.	1,39,63,032.39.	11.02.2020
61/ 24	05.11.2019	construction of sw-1 construction of Type-IV quarters at Armur-1 Number, Karimnagar-3 Numbers, sw-2 for construction of Type-III quarters at Armur-1 Number, sw-3 for construction of Type-II quarters at Armur-6 Numbers.	2,96,28,171.13/-	25.02.2020
63/ 24	05.11.2024	constructions of office building of ADEN/KRMR, SSE/Works/KRMR, SSE/P.way/ARMU, sw-2 proposed construction of	3,56,09748.96/-	25.02.2020

		stores shed to SSE/P.way/KRMR and SSE/P.way/ARMU, sw3- LPJL-NZB-improvement of staff quarters at KRMR, GDRA, LPJL Stations of 1 st respondent at Armur, Karimnagar, Gangadhara, Lingampet and Jagityal.		
--	--	--	--	--

6. It is the contention of the applicant that a contract agreement was entered between the applicant and the 1st respondent on 09.02.2021 for execution of aforesaid works. Vide letter dated 02.02.2021, it has informed to 1st respondent that the period of contract work was already ended. Even then, 1st respondent neither entered into agreement nor supplied drawings. The applicant has received structural designs of drawings from M/s. Arch view Designs Private Limited and vide letter dated 01.03.2021, it had submitted the same to 1st respondent for their approval. As there was no response from the 1st respondent, the applicant again addressed a letter dated 31.03.2021 requesting 1st respondent to approve the drawings and also informed that the applicant had already started the miscellaneous works.

7. The applicant addressed letters dated 19.05.2021, 22.06.2021, 16.07.2021, 30.08.2021 to 1st respondent but there was no response.

8. On the other hand, vide letter 23.10.2021, 1st respondent issued notice of termination of contract dated 09.02.2021 to the applicant stating that applicant could not complete the work within the stipulated date of completion/mutually extended date of completion, that the applicant had failed to apply for further extension of period of completion on valid and reasonable grounds as acceptable, that 1st respondent would claim damages under Clause-62 of General Conditions of Contract (GCC) in addition to forfeiting the Earnest Money Deposit (EMD) and encashing the Performance Guarantee (PG) submitted by the applicant. Therefore, applicant invoked arbitration Clause 64(3) of the GCC for adjudication of disputes between the applicant and respondent. The applicant filed an application vide O.P.No.13 of 2021 under Section 9 of the Act, and learned I Additional Chief Judge, City Civil Court, Secunderabad granted *status quo* which is subsisting. Since there are disputes between the applicant and 1st respondent which are arbitrable in nature, the applicant has invoked arbitration clause by way of issuing notice

dated 22.01.2022 to 1st respondent with a request to appoint an arbitrator within the period prescribed under Clause 64(3)(a) (ii). Despite receiving and acknowledging the same, 1st respondent did not act upon the same. Therefore, the applicant filed the present application to appoint an arbitrator to adjudicate the disputes between them.

9. Respondent No.1 filed counters with similar contentions contending as follows:-

The work was awarded to applicant for construction of quarters. Letter of acceptance dated 10.03.2021 was also issued. The said work was to be completed within 9 months from the date of letter of acceptance which was expired on 09.12.2022. As per GCC, proposal of contract agreement binding on the parties that until a formal agreement is prepared and executed, acceptance of the tender shall constitute binding contract between the parties subject to modifications, as may be mutually agreed to between the parties and indicated in the letter of acceptance issued by respondent offering for the said contract work awarded to the applicant. Therefore, the applicant cannot claim that there is delay on its part and due to the

said delay on the part of the respondent in execution of agreement, there is delay in execution of the agreement, there is no fault on the part of the railways, to execute and start the work till date by the applicant. The applicant willfully and with *mala fide* intention has not started the work as per the contract agreement which is binding on the parties in spite of repeated requests and attempts.

10. Thus, according to respondent No.1, the applicant has to start work on receipt of letter of acceptance. It is sufficient to start the work. The applicant has to approach the railways to get drawings. The building drawings were issued to the applicant in September, 2020 and again after modification in the month of August, 2021. Applicant is responsible for structural drawings within the stipulated period. Or else, the applicant should apply for extension of the completion date with valid reasons. The applicant did not seek any extension of the completion date. The applicant submitted structural drawings only on 01.03.2021. The applicant failed to commence work and complete the work within the stipulated time of 9 months. Therefore, 1st respondent issued slow progress notice on 30.08.2021, seven days notice and 48 hours notice to applicant as per the GCC for default of the applicant to start the work and complete it. There is no response from the

applicant. Therefore, the respondents terminated the contract vide notice dated 23.10.2021 after following due procedure laid down under GCC. There is no error in it. Forfeiture of EMD and Bank Guarantee, is part of termination procedure as per the GCC. Therefore, the applicant is not entitled for EMD and Bank Guarantee amounts and the same was forfeited.

11. Thus, according to the 1st respondent delay was on the part of the applicant in submitting structural drawings and did not even seek any extension.

12. It is further contended by the 1st respondent that the applicant has not approached higher authorities as per the procedure laid down under clause 63 of GCC i.e. approach 1st respondent with a request to refer the matter to conciliator which is mandatory. Therefore, failure to comply with the same, the applicant is not entitled for appointment of an arbitrator. With the said submissions, respondent No.2 sought to dismiss the applications.

13. Thus, according to the applicant, there is delay on the part of the respondent No.1 in entering into agreement in furnishing drawings. Despite specific request and addressing several letters, there

was no response from 1st respondent. The work itself was not commenced due to non-furnishing of the drawings by 1st respondent. Therefore, 1st respondent cannot terminate the contract by issuing termination letter dated 03.10.2022.

14. Whereas, according to the respondent No.1, there is delay on the part of the applicant in commencing the work. On receipt of letter of acceptance, the applicant has to start the work. Issuance of letter of acceptance is enough. The delay is on the part of the applicant in submission of drawings. The applicant did not initiate procedure laid down under the clause No.63 by requesting the 1st respondent to refer the matter to conciliator without complying with the said procedure which is mandatory, the applicant filed the present application.

15. Thus, there are disputes between the applicant and respondents with regard to contract work of construction of residential quarters pursuant to tender notification dated 05.11.2019 and letters of acceptance. Admittedly, the applicant submitted EMD and Bank Guarantee. Respondent No.1 terminated the contract on the ground that the applicant failed to commence and complete the work within

the stipulated time of 9 months as agreed by way of letters of acceptance. Thus, this court is of the considered view that there are disputes between the applicant and respondents which are arbitrable in nature.

16. The respondent is opposing the present application on the ground that the applicant has not approached the higher authorities of railways as per Clause 63 of the GCC with a request to refer the matter to the Conciliator which is mandatory. The applicant did not follow the said procedure and therefore, the present applications are not maintainable.

17. In the light of the same, it is relevant to extract clause No.63 of the GCC which is as follows:-

**SETTLEMENT OF DISPUTES - INDIAN CONCILIATION
RAILWAY ARBITRATION AND RULES**

63. Conciliation of Disputes:- All disputes and differences of any kind whatsoever arising with the contract, whether during the progress before or after the determination of the contract, shall connection tor to the "Chief Engineer" or "Divisional Railway Manager" through "Notice of and whether that no such notice shall be served later than 30 days after the date of issue of the work or after its pletion Certificate by the Engineer. Chief Engineer or Divisional Railway Manager "provided be referred by within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of the conciliator(s) to the Contractor.

The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent partial manner within the terms of contract.

If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a settlement agreement duly signed by Engineer In-charge. Contractor and conciliator(s). If the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated as per Section 76 of The Arbitration and Act, 1996.

18. Filing of an application under Section 11 of the Act without approaching the Higher authorities to refer the matter to the Conciliator fell for consideration before Bombay High Court in **Rajiv Vyas vs. Johnwin¹**. The arbitration clause in the said case is almost same as that of the arbitration clause in the present case. The Bombay High Court held that even if a party invokes arbitration clause contrary to the arbitration agreement, there is nothing that prevents it from making an application under Section 11, in accordance with the terms of the arbitration agreement, especially where errors of this nature are inadvertent. Thus, the Bombay High Court disposed of the said arbitration application filed by the applicant therein directing the parties to refer the disputes between them for conciliation to the Conciliator of the said Court at the first instance. If the reference to

¹ 2010 (5) Mh.L.J., Arb.Appln.No.162 of 2009, dated 08.09.2010

the Conciliator does not succeed in resolving the disputes and differences between the parties therein, same shall be referred to an arbitral tribunal.

19. In **Sushil Kumar Bhardwaj vs. Union of India**², the Delhi High Court held that the parties have to follow the agreed procedure being mandatory, in the absence of an averment or a pleading to the effect that the agreed procedure or the procedure prescribed in law has been followed, there would be no option but to reject the application under Section 11(6) of the Act as without cause of action and/or premature. The Delhi High Court referred the principle laid down by the Apex Court in **P Manohar Reddy Vs Maharashtra Krishna Valley Development Corp.**³ giving supremacy to contractual terms in arbitration. Arbitration is a feature of an agreement and in arbitration matters the agreement is supreme and cannot be given a go-bye by the parties, especially when it is found to be in the interest of the parties and to have been inserted with a view to avoid unnecessary arbitrations in matters in which the higher authorities find a possibility of settlement.

² SCC Online Del 4355

³ (2009) 3 SCC 494

20. In **Demerara Distilleries Private Limited vs. Demerara Distillers Limited**⁴, on examination of the facts of the case and that there was elaborate correspondence by and between the parties, the Apex Court held that the proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to Arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application filed application under Section 11 (6) of the Act appointing arbitrator.

21. In the light of the aforesaid discussion, coming to the facts of the case on hand, according to the respondent No.1, the application filed to commence and complete the work within the timelines mentioned in the letter of acceptance and therefore, the respondent has already terminated the contract by way of issuing termination letters. The applicant filed an application under Section 9 of the Act and the Court granted *status quo* order. The said application is pending and the said *status quo* order is subsisting.

⁴ (2015) 13 SCC 610

22. As per clause 63 of the GCC, the applicant has to request higher authorities of Railways to refer the matter to conciliator, Chief Engineer of Divisional Railway Manager through notice of dispute. 1st respondent has already terminated the contract by issuing termination letters. Thus, there are disputes between the applicant and respondent No.1. Therefore, approaching higher authorities of respondent/ Railways with a request to refer the dispute to the conciliator i.e. Chief Engineer or Divisional Railway Manager, of Railways would be a futile exercise.

23. There is no dispute that the word 'shall' is used in clause No.63 conciliation of disputes. But in the present fact scenario i.e. respondent No.1 has already terminated the contract by issuing termination letter on the ground that the applicant failed to commence and complete the work within the period agreed. Applicant filed an application under Section 9 of the Act and that there are strained relations between them. Even if the applicant invokes an arbitration clause without following the said procedure, nothing prevents the applicant in making an application under Section 11 of the Act as per the terms of GCC.

24. In the light of the aforesaid fact scenario, relegating the applicant to higher authorities of respondent with a request to refer the dispute to conciliator will not serve any purpose and it would be futile exercise. It will definitely take some time which will defeat the very object of the Act. The applicant had issued notice dated 21.01.2022 requesting the respondent No.1 to appoint an arbitrator. Despite receiving and acknowledging the said notice, respondent No.1 did not act upon the same.

25. As discussed supra, there are disputes between the applicant and respondents with regard to tender, execution of work in terms of letter of acceptance and the same are arbitrable disputes to be adjudicated by an arbitrator.

26. In view of the above discussion, these Arbitration Applications are allowed. **Sri A. Shankar Narayana, Former Judge, High Court of Telangana at Hyderabad, Chairperson, A.P. State Commission for Backward Classes, Plot No.63, Saketh, 'Mithla', Kapra Municipality, Kapra, Hyderabad -62, (Mobile No. 9493193365)** is appointed as an arbitrator to adjudicate the disputes

between the parties. The parties are at liberty to take all the defences before the learned Arbitrator.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. Sri A. Shankar Narayana, Former Judge, High Court of Telangana at Hyderabad, Chairperon, A.P. State Commission for Backward Classes, Plot No. 63, Saketh, 'Mithla', Kapra Municipality, Kapra, Hdyyerabad -62 (Mobile No. 9493193365) (By Special Messenger)
(Along with a copy of affidavit and material papers)
2. One CC to Sri M. Sridhar, Advocate (OPUC)
3. One CC to Sri V.T. Kalyan, Advocate (OPUC)
4. One CC to Sri B. Mohan, Advocate (OPUC)
5. Two C.D.Copies

Kul/gh

HIGH COURT

DATED:25/11/2024



COMMON ORDER

Arbitration Application Nos. 59, 60, 61 and 63 OF 2024

Allowing the all Arbitration Applications.

7 copies
Fr
19/12/24