

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/496/2025
NIRANJAN JENA

VS

CHIEF ENGINEER AND DIRECTOR, GROUND
WATER DEVELOPMENT DEPARTMENT AND
NODAL OFFICER, STATE PROJECT MANAGEMENT
UNIT, NATIONAL HYDROLOGY PROJECT- ODISHA

BEFORE:

THE HON'BLE JUSTICE SHAMPA SARKAR

Date : 23rd July 2025.

Appearance:

Mr. Satyaki Mukherjee, Adv.
Mr. Lalit Baid, Adv.
Mr. Sidhartha Das, Adv.
Mr. Bhavesh Garodia, Adv.
Ms. Tamoghna Saha, Adv.
...for petitioner.

1. Despite service, none appears on behalf of the respondent.
2. This is an application for appointment of an arbitrator in terms of clause 24.4(a) read with clauses 24.4(f) and 24.4(d) under Section-IX of the Particular Conditions of Contract(PPC).The relevant clauses are quoted below:-

“(a) In case of Dispute or difference arising between the Employer and an Indian Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the

Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Indian Council of Arbitration/ President of the Institution of Engineers (India)/The International Centre for Alternative Disputes Resolution (India). For the

purposes of this Sub-Clause, the term "Indian Contractor" means a contractor who is registered in India and is a juridical person created under Indian law as well as a joint venture between such a contractor and a Foreign Contractor.

(d) Arbitration proceedings shall be held at Kolkata, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(f) Where the value of the contract is Rs.50 million and below, the disputes or differences arising shall be referred to the Sole Arbitrator. The Sole Arbitrator should be appointed by agreement between the parties; failing such agreement, by the appointing authority, namely the Indian Council of Arbitration/President of the Institution of Engineers (India) /The International Centre for Alternative Disputes Resolution (India)."

3. The petitioner was awarded a contract for the work of Renovation and Furnishing including Civil Works for Establishment of Knowledge Centre at WALMI, Odisha. A contract was entered into between the respondent as the employer and the petitioner as the contractor, on November 4, 2022. Clause 2 of the said contract provided that the General Conditions of Contract (GCC) and Particular Conditions of Contract (PCC) shall be applicable and shall be read and construed to be a part of the agreement. The GCC provides a mechanism for dispute redressal by an Adjudicator or the Dispute Review Expert.
4. The petitioner had requested for constitution of such a body, but the scope of dispute between the parties do not fall within the ambit of clause 24.1 of the GCC, in my prima facie view. Despite such request of the petitioner, no such Adjudicator was selected by the respondent.

5. The respondent remained silent when the petitioner had requested for constitution of a body for dispute redressal by a letter dated December 2, 2024. The said letter was addressed to the respondent and the petitioner had requested constitution of the dispute redressal committee or a similar body for settlement of the dispute between the parties. The, disputesas enumerated in the letter involved non-payment of dues towards additional work and towards works already completed.
6. The petitioner raised a demand. The notice was duly served and service thereof is available from the postal records annexed to the application. When the respondent remained silent, by a letter dated January 6, 2025, the petitioner invoked the arbitration clause and supplied names of three retired judges giving the respondent a choice for appointment of a learned sole arbitrator. The said notice was also duly served. The postal track report is annexed to the application. By a notice dated January 16, 2025, the respondent, through the Deputy Director Hydrometry (North), Odisha, replied to the petitioner's letter and stated that the matter should have been referred to the Dispute Review Expert or the Adjudicator.
7. As already detailed hereinabove, the Adjudicator or the Dispute Review Expert is the authority under the GCC to adjudicate matters arising from the decision of the Project Manager. In the present case, the dispute is not with regard to the decision of the Project Manager, but the dispute is with regard to non-payment of alleged dues. In any

event, the petitioner had already approached the authority for constitution of a Dispute Redressal Committee, by a letter dated September 2, 2024. The respondent did not reply to the said letter for four months and there was no communication with regard to the constitution of such Committee.

8. Under such circumstances, reliance is placed on the decision of Visa International Ltd. Vs. Continental Resources (USA) Ltd. reported in (2009) 2 SCC 55 in support of the contention that as the respondent had shown no interest to resolve the claim of the petitioner seeking settlement of the dues either by an adjudicator or a dispute review expert, Further reference of the matter to an adjudicator will be an empty formalities.
9. The petitioner cannot wait for months together for response from the respondent. Clause 24.4 of the GCC provides that in case of disputes and differences arising between the employer and the contractor relating to any matter arising out of the agreement, shall be settled in accordance with the Arbitration and Conciliation Act, 1996 and the arbitral tribunal shall consist of three arbitrators, one each to be appointed by the employer and the contractor. The third arbitrator shall be chosen by the two arbitrators appointed by the parties who shall act as a presiding arbitrator. In case of failure of the two arbitrators to reach a consensus with regard to appointment of third arbitrator, the presiding arbitrator shall be chosen by the Indian Council of Arbitration

/President of the Institution of Engineers (India)/The International Centre for Alternative Dispute Resolution (India).

10. In my opinion, this case does not fall within the category as mentioned hereinabove, insofar as, the choice of third arbitral tribunal is concerned. There is no consensus between the parties with regard to the nomination of the arbitrator. Moreover as the value of the contract is less than Rs.50 million, the dispute has to be resolved by a sole arbitrator in terms of clause 24.4(f). The seat of arbitration has been provided in Calcutta under provision 24.4(d).
11. Under such circumstances, the application is disposed of by appointing Mainak Bose, learned Senior Advocate as the sole arbitrator to arbitrate the dispute. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)