



2025:CGHC:35230

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 12 of 2025**

M/s Gupta Enterprises Through Partner Mr. Suresh Kumar Singh, S/o Late Kishore Chand, R/o S - 120, Greater Kailash - 1, New Delhi Pin 110048.

... Applicant**versus**

1- Chairman And Managing Director Rites Ltd Rites Bhawan, Plot No.1, Sector 29, Gurgaon - Haryana, Pin 122001 Local Address - Rajat Shree House, Kotra Road, Raigarh (C.G.) 496001 E-Mail Cmd@Rites.Com

2 - Executive Director (Ri And Metro) (Appointing Authority) M/s Rites Ltd. Corporate Office At Plot No 1, Sector 29, Gurgaon, Haryana.

3 - Mr. Rajiv Jain The Sole Arbitrator, (Retd, Director, Intelligence Bureau, Mha, Govt. Of India), R/o Flat No - 5f, Tower 7, Type 7 Kidwai Nagar, (East) New - Delhi, Pin-110023

4 - National Thermal Power Corporation Ltd. Office Address Ntpc Limited Ntpc Bhawan, Scope Complex, Institutional Area, Lodhi Road, New Delhi - 110003 Local Address - Chhapora, Pussore, Raigarh Chhattisgarh – 496440 **... Respondents**

For Applicant : Mr. Hemant Gupta, Advocate.

For Respondent No. 1 & 2 : Mr. Ramakant Mishra, DSGI.

For Respondent No.4. : Mr. Anuroop Panda, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Order on Board****22.07.2025**

1. This is an application under Section 15 for termination of mandate and fresh appointment of an Arbitrator under Section 11(6) of Arbitration and Conciliation Act 1996.

2. The applicant has prayed for the following relief(s):

“4.1 That this Hon'ble Court may graciously be pleased to admit the application and issue Rule upon the respondents. Stay the current arbitration proceeding till the disposal of this petition otherwise the applicant will suffer irreparable loss and injury.

4.2 That this Hon'ble Court may graciously be pleased to terminate the Arbitration Proceeding continuing before the Sole Arbitrator / Respondent no 3. and further a fresh Appointment of Arbitrator shall be made through Delhi International Arbitration Centre DIAC or technical arbitrator as per the names suggested by the Petitioner in letter dated 24.10.2024 (Annexure A/6) to decide the dispute pending adjudication within a stipulated period on the cost of the non applicants / Respondent no 1 & 2.

4.3 That the cost of this litigation of arbitration may also be beard by the respondent / RITES.

4.4 The cost of the litigation till date may also be allowed.

4.5 That Hon'ble court may pass any other order(s). direction(s), as may deem fit and proper in the light of the facts and circumstances of the case.

4.6 That for this act of kindness, the Applicant shall as in duty bound ever pray. An Affidavit in support is filed herewith.”

3. By way of this arbitration petition, the applicant challenges the unilateral appointment of a Sole Arbitrator (Respondent No. 3) by respondent No. 1- RITES Ltd. in connection with a civil construction contract executed for NTPC. The applicant alleges that despite invoking the arbitration clause

and suggesting three qualified technical arbitrators on 24.10.2024, RITES unilaterally appointed a non-technical ex-intelligence officer as arbitrator without consent or waiver under Section 12(5), in violation of Schedule V and VII of the Act and principles laid down by the Hon'ble Supreme Court. The applicant asserts that the arbitrator lacks technical expertise required for the dispute, which involves complex civil construction issues and cost escalations. As such, the applicant seeks termination of the ongoing arbitration proceedings, a fresh appointment of a technically competent arbitrator through DIAC, and also prays for stay of proceedings, litigation costs, and other reliefs.

4. Mr. Hemant Gupta, learned counsel for the applicant submits that, applicant is carrying its business in the name and style as M/s Gupta Enterprises and the Respondent is known as RITES further in short - both the parties have carrying on the business of "CIVIL CONSTRUCTIONS". And an agreement was executed between the applicant/petitioner and RITES - to perform Civil Work as mention in the agreement for NTPC, through its agent RITES. And the Respondent RITES itself mention that they were executing the present agreement as an agent of (here & after NTPC for convenience of Hon'ble court),(hereinafter called the Employer expression shall, wherever the context so demands or requires, include their successors in office and assigns), therefore the NTPC is one the beneficiary of the contract hence it is a necessary party to the case. The office of the RITES invited Tender on 05-01-2018 as tender no 0518-19/OT/NTPC LARA/ SHED & BUILDING/PLANT SCOP/PKG-VIB /2018 dated 05-01-2018, for which the petitioner/applicant has also participated vide its tender form dated 22-10-2018 and make his bid as BID no. 58842, which was accepted. The Non-Applicant No. 2 called upon

the Applicant /petitioner for discussion about the work, its scope, execution, mobilization of machinery, labor issues etc., and other vital things regarding execution of work. After the said discussion the letter of acceptance has been issued on 05-01-2019. In pursuant to the Clause I of the RITES GCC the applicant/ petitioner required to furnish Performance Guaranty for an amount equivalent to 5% (Five Percent) of the contract value which is 1,09,83,000/- and addition Performance Guaranty @ 16,55,000/- has to be submitted for issuance of Letter of Acceptance, thus the applicant had submitted the Performance Guaranty for sum of Rs. 1,26,38,000/ in favor of the Respondent RITES with P.G. no-0963IGPER000119. And thereby the letter of acceptance was issued to the applicant/petitioner. A copy of letter of acceptance dated 05-01-2019 is annexed here as ANNEXURE A/1 for kind perusal of the Hon'ble court. After the issuance of letter of acceptance vide letter no RITES/PRO/RIG/NTPC-LARA/Pkg-VIB/GPTA Enterprises-New Delhi/ 2018-19/04 dated 05-01-2019 for Construction of Shed & Building Including Sanitary, Water Supply, Electrical Wiring Including Supply & Installation and Other Misc. Work at LAARA Plant end of MGR for NTPC/Lara STPP (2x800 MV) in District-Raigarh, Chhattisgarh (with a completion period of 12 months), to Applicant, for a total price work, is sum of "21,96,40,549/-" (Twenty one cores Ninety Six lacks, forty thousand five hundred forty nine). A Copy of the contract is annexed here as ANNEXURE A/2 for kind perusal of the Hon'ble court, thereafter, the applicant/ petitioner wrote letter to the RITES requesting from the Respondent RITES to issue FORM-III which is requires for labor license. A copy of the letter dated 06-01-2019 if marked and filed herewith as ANNEXURE A/3 for kind perusal of the Hon'ble court. It is important to

mention that the applicant firm possesses a certificate from the office of Director General, CPWD, License to Electrical Contractors etc. The applicant courtly submitted that, the said work as awarded to the applicant firm was started from 13-02-2019 for next 12 months to complete but due to Pandemic hits the nation and the nation was under historical lockdown, and many other reason due to respondent were not provided proper assistance etc. thus the situation is beyond the control and command of the applicant, thus the date for completion were revised on various hindrances and finally new date for completion would be 31-12-2021. Here it is also important to draw the attention of the Hon'ble court that the said work was completed within revised dates with enhanced amount of 41.12 Crores. Due to the circumstances mention above and huge delay because that, there was huge deviation on the price of raw material. And now the RITES was also acknowledged for the same with all details and particular, and to full fill their contractual obligation in this regards, specially mention that due to various fundamental breaches on respondent's parts work was delay and causing losses to applicant, since the dispute has unearthed, the Applicant himself notice dated 02-09-2024 invoke the Clause 25 of the agreement requested the RITES to refer the dispute and differences arising out of the said claims to the Arbitrator. A copy of the notice dated 02-09-2024 is marked and filed herewith as ANNEXURE A/4 for kind perusal of the Hon'ble court. After receive of notice of clause 25 dated 02-09-2024, the RITES responded vide their reply dated 23-09-2024 against the claim & notice of the applicant /petitioner and denied all the claim and work. A copy of the reply of RITES dated 23-09-2024 is marked and filed herewith as ANNEXURE A/5 for kind perusal of the Hon'ble court. After rejection of claim the Applicant give

notice of appointment of sole arbitrator vide letter dated 24.10.2024 marked and filed herewith as ANNEXURE A/6 and suggested names of three technical Arbitrator from the approved panel of the Respondent to choose one from the said three names. Surprisingly, the respondents RITES have unilaterally appointed an Sole Arbitrator vide letter dated 14.12.2024 marked and filed herewith as ANNEXURE A/Z, other than the names suggested by the petitioner without the consent or walver u/s 12(5) by the petitioner. Also, the said appointment is in contravention of the schedule 5 and schedule 7 of the act 1996, and law laid down by the Hon'ble Supreme court in Citation of judgments. Such unilateral appointment was not accepted by the applicant, and he express his disagreement to the said appointment, vide his letter dated 16-12-2024 to the RITES. A copy of the said letter dated 16-12-2024 if marked and filed herewith as ANNEXURE A/B for your kind perusal of the Hon'ble court. The applicant was informed by the sole arbitrator on the same day & date of his appointment vide his letter dated 16-12-2024 to appear before him through video-conference on 26-12-2024 at 4.30 P.m. A copy of arbitrator letter dated 16-12-2024 by arbitrator is marked and filed herewith as ANNEXURE A/9 for kind perusal of the Hon'ble court. The same was denied by the applicant vide its written communication dated 26-12-2024 mention *inter alia* the reasons, that since his appointment was unilateral, without mutual consent of with the consent of the applicant herein, and the applicant already shown his dis-agreement to the appointment thus the appointment is Non-Est in the eye of law. A copy of the letter dated 26-12-2024 if marked and filed herewith as ANNEXURE A/10 for kind perusal of the Hon'ble court. That, further the sole Arbitrator has given disclosure under section 12 of the act regarding the past and future relationship with

the Parties and subject matter of dispute under Section 10 of the act 1996 provides that parties are free to determine the number of arbitrators, provided that such number shall not be an even number. And If parties fail to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator. Section 11 pertains to the appointment of arbitrators. Section 11(2) provides that subject to Section 11(6), parties 'are free to agree on a procedure for appointing the arbitrator or arbitrators. Section 11 provides recourse to the following contingencies if the parties fail to adhere to the agreed procedure for the appointment of an arbitrator or arbitrators, but in the instant case the RITES has without consulting the penal of arbitrators and without obtaining the consent unilaterally appoint Resp. no 3 as Sole Arbitrator which is again breach of procedure of the act. In the above stated facts and circumstances it may be deduced that the learned Arbitrator is unilateral choice of RITES just to do partiality with the applicant thus he may be removed and new arbitrator (through Delhi International Arbitration Centre DIAC or technical arbitrator as per the names suggested by the Petitioner in letter dated 24.10.2024 (Annexure A/4A) be appointed as Arbitrator to adjudicate the dispute. Further the present dispute and claim pertain to technical nature of construction matter which should be better adjudicated by a technical expert having experience in Construction industry practices. However, the sole arbitrator as appointee was Ex intelligence officer and the doesn't possesses any special / technical qualification too, in the field of civil engineering and construction industry, as required in the present case as well and further the present sole arbitrator was Ex-intelligence officer worked for railways as well and he has no possesses any special / technical qualification too, in the filed as required in the present case as well. The court fee as per

the high court rules is affixed with the application and the application is supported with an affidavit. The said work as awarded to the applicant firm was started from 13-02-2019 for next 12 months to complete but due to Pandemic hits the nation and the nation was under historical lockdown, and many other reason due to respondent were not provided proper assistance etc. Because of that the situation is beyond the control and command of the applicant, thus the date for completion were revised on various hindrances and finally new date for completion would be 31-12-2021. Here it is also important to draw the attention of the Hon'ble court that the said work was completed within revised dates with enhanced amount of 12 Crores. In the meanwhile, the market hit by another disaster of war between Ukraine and Russia and because of that the price was abnormally hike. RITES was also acknowledged for the same with all details and particular, and to full fill their contractual obligation in this regards, specially mention that due to various fundamental breaches on respondent's parts work was delay and causing losses to applicant. That, since the dispute has unearthed, the Applicant himself notice dated 02-09-2024 invoke the Clause 25 of the agreement requested the RITES to refer the dispute and differences arising out of the said claims to the Arbitrator. That RITES responded vide their reply dated 23-09-2024 against the claim & notice of the applicant & denied all the claim and work. After rejection of claim the Applicant gave notice for appointment of sole arbitrator vide letter dated 24.10.2024 & suggested names of three technical Arbitrator from their panel. But Surprisingly, the RITES unilaterally appointed an Sole Arbitrator vide letter dated 14.12.2024. That, the applicant was informed by the sole arbitrator on the same day & date of his appointment vide his letter dated 16-12-2024 to appear before

him through video-conference on 26-12-2024 at 4.30 p.m. The applicant herein denied and showing his disagreement with said appointment vide its written communication dated 26-12-2024, mention *inter alia* the reasons, that since his appointment was unilateral, without mutual consent or with the consent of the applicant herein, and the applicant already shown his dis-agreement to the appointment thus the appointment is Non-Est in the eye of law. Hence this application for termination of mandate of sole arbitrator (Resp. no 3) and seeking new appointment of Arbitrator, to resolve the dispute.

5. Mr. Ramakant Mishra, DSGI appearing for respondents No. 1 & 2 relying on the return filed, opposes this arbitration request application and submits that an Arbitrator has already been appointed by them, however, he submits that the respondents will have no objection if any retired Judge of this High Court is appointed as Arbitrator for resolving the dispute that has arisen between the parties.
6. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
7. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice R.C.S. Samant, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.
8. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Justice R.C.S. Samant** a retired Judge of this High

Court is appointed to act as the Sole Arbitrator to resolve the dispute involved in this arbitration request between the parties. Further in view the fresh appointment of the Honb'le Mr. Justice R.C.S. Samant as the new arbitrator, the appointment of the respondent No.3 as an Arbitrator, stands terminated.

9. The Registry is directed to communicate this order to **Hon'ble Mr. Justice R.C.S. Samant** in the proper address.
10. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
11. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE