



2025:DHC:2458



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 191/2025**

Date of Decision: 02.04.2025

IN THE MATTER OF:

RAILTECH TECHNOLOGIES PVT LTDPetitioner

Through: Mr. Shyam Sunder Gangwan Adv.

versus

UNION OF INDIARespondent

Through: Mr. Niraj Kumar, Sr. Central Govt.
Counsel with Mr. Rishav Dubey,
G.P., and Mr. Chaitanya, Adv.**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. It is submitted that in order dated 20.03.2025, the appearance of Mr. Rishav Dubey, G.P., is not marked. Accordingly, the appearance of Mr. Rishav Dubey, G.P., be read as marked in the order dated 20.03.2025, along with Mr. Neeraj Kumar, Senior Central Government Counsel.
2. Heard learned counsel appearing for the parties.
3. Mr. Neeraj Kumar, Senior Central Government Counsel, submits that he has already filed the reply. However, the same is not available on record. He, however, has handed over a hard copy of the same, which has been perused by the Court.
4. The facts of the case indicate that on 25.11.2022, a tender was opened

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for the supply of an item, namely, “Set of TM Duct for MEMU3PH coach” in which the petitioner participated, and on 30.11.2022, the respondent issued a letter of acceptance in favour of the petitioner. During the subsistence of the letter of acceptance, a purchase order dated 22.12.2022 was placed with the petitioner.

5. The delivery period for the item was from 01.03.2023 to 29.04.2023. At the request of the petitioner, the delivery period appears to have been extended until 20.05.2023.

6. It is an undisputed fact that the standard governing conditions of tender are the general conditions of contract and IRS conditions of contract.

7. The respondent, on account of certain alleged violations of the terms of the contract, has cancelled the contract by imposing 10% general damages. According to the respondent, the firm failed to deliver the goods as per the contract despite being given a fair opportunity through an extension of the delivery period.

8. Learned counsel appearing for the petitioner contends that, as per Clause 2900, the dispute arising in the instant case is amenable to adjudication by an Arbitrator in terms of the provisions of the Arbitration and Conciliation Act, 1996 (A & C Act). The said clause reads as under:

“2900. Arbitration.

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts

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entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to 'arbitration at all.

(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”

9. It is thus seen that the dispute is amenable to be adjudicated by the

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arbitrator. It is explicitly evident that where there exists an arbitration clause in the event any dispute arises between the parties, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the same. Reference can be made to the decisions of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,¹ *TRF Limited v. Energo Engineering Projects Ltd.*,² *Bharat Broadband Network Limited v. United Telecoms Limited.*,³ and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*⁴.

10. Having considered the facts of the circumstances of the case, the Court finds that the dispute arisen is capable of being decided by the Arbitrator.

11. Accordingly, without prejudice to the rights and contentions of the parties and leaving all questions open to be adjudicated by the Arbitrator, the Court appoints Ms. Samridhi Sharma, Advocate, (Mobile No- 9958411421; email ID -smridhisharma23@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

6. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “A&C Act”).

7. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547

⁴ 2023 SCC OnLine SC 1666.

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the parties and the learned Sole Arbitrator.

8. The parties shall share the arbitrator's fee and arbitral cost, equally.

9. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

10. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

11. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

APRIL 2, 2025

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Click here to check corrigendum, if any

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