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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 283/2025 & I.A. 3579/2025**

SUVIDHA ENGINEERS PROJECT THROUGH ITS PROPRIETOR
MR SHIV HARI SINGLAPetitioner

Through: Mr. Sarthak Sawhney, Mr. Malviya
Satija, Advocates

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Viprav Achrya, SPG and Mr.
Gokul Sharma, GP, Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **09.04.2025**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of an arbitrator in respect of agreement bearing CA No. CWE/BH-05/2019-20: SPL REP AIR/REPLACEMENT OF BER WATER COOLER, REFRIGERATOR AND WINDOW/SPLIT AC OF BASE HOSP UNDER GE (E/M) BASE HOSP, DELHI CANTT-10 ('Contract'), executed between the parties on 05.07.2019.

2. It is stated that the date of commencement of the Contract was 22.07.2019 and the original date of completion was decided to be 21.01.2020. It is stated that the work was actually completed by the Petitioner on 10.02.2020.



3. It is stated that after the execution of the Contract, the Petitioner submitted an FDR bearing No. 16379346 amounting to Rs. 2,15,000/- with a validity period of 3 years to the Respondent No.1.
4. It is stated that some dispute arose between the parties and thereafter, the Petitioner submitted its final RAR, which was approved on 29.02.2020 to the tune of Rs. 40,30,000/-. It is stated that however only 30,59,000/- was received by the Petitioner on 23.03.2020, citing 'Insufficient funds with the concerned head' as the reason for the partial payment. It is stated that the Petitioner was informed that the complete payment will be done in April, 2020. It is stated that however the said outstanding payment was never made.
5. It is stated that till date the FDR is lying deposited with the Respondent; and has not been released till date to the Petitioner.
6. It is stated that Petitioner was left with no choice; and it issued notice invoking arbitration vide letter dated 08.07.2022 to the Respondent No.2 in term of Clause '70' of the GCC, but the Respondent No.2 failed to appoint any Arbitrator as provided in the Arbitration clause.
7. It is stated that as per the Clause '70' of the GCC, the sole Arbitrator has to be a Serving Officer of the department, empaneled to the Respondent. It is stated that as per Section 12(5) of the Act of 1996 appointment of a person as an Arbitrator who falls under any of the categories specified in the Seventh Schedule to the Act which has been inserted by the 2015 amendment is prohibited. It is stated that therefore in light of the aforesaid legal position the Serving Officer of Respondent cannot be appointed as an Arbitrator.
8. Learned counsel for the Petitioner states that after the issuance of notice invoking arbitration (dated 08.07.2022) by the Petitioner, Respondent No.1 issued a letter dated 23.09.2022, vide which they sought to amend the



contract, by amending the arbitration clause and mentioned that Sole Arbitrator is to be appointed from the panel of Ministry of Defence (MoD). He states that this amendment was signed and accepted by the Petitioner vide letter dated 21.01.2023 and duly sent back to Respondent No.1. He has also handed over a list of Arbitrators on the panel of MOD dated 19.03.2025.

The Petitioner is directed to place the letters dated 23.09.2022 and 21.01.2023 on record within one (1) week.

9. It is stated however, Respondent failed to appoint an Arbitrator even thereafter and therefore, the Petitioner is constrained to approach this Court through the present petition.

10. In reply, he states that the list of MoD empaneled Arbitrator(s) supplied by the learned counsel for the Petitioner cannot be appointed for the present lis between the parties. He states that the Arbitrator ought to have the minimum qualification of degree in engineering as recorded in the amended Arbitration clause. He states that it should be the Respondent who should be allowed to appoint the Arbitrator as per the arbitration clause and refers to clause 70 of the GCC. He states that in the alternative, if the Court so deems appropriate it may appoint an Arbitrator empaneled with DIAC who holds a degree in engineering.

Decision

11. As per the order dated 11.02.2025, the learned counsel for the Respondent appeared on advance notice. On the said date the learned counsel for the Respondent submitted that the Respondent had replied to the notice invoking arbitration dated 08.07.2022. The Court directed the Respondent to place the said response on record, which has not been placed on record.



However, it appears this would be the letter dated 23.09.2022 brought on record by the Petitioner today.

12. The Clause 70 of the GCC which gives the authority to the Respondent No. 2, to refer the matter to a Sole Arbitrator has now been held to be bad in law by the Supreme Court in **Perkins Eastman Architects DPC v. HSCC (India) Limited**¹, and **Central Organization for Railways Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Company**². Therefore, the reliance placed by the Respondent on Clause '70' to oppose appointment by this Court is without any legal basis.

13. The Respondent had the opportunity to appoint the Sole Arbitrator, even till the point when the letter dated 21.01.2023 was sent to the Respondent by the Petitioner, but the Respondent has failed to agree to appoint the Sole Arbitrator. The said right of the parties to appoint Sole Arbitrator extinguished the moment this Section 11 of the Act of 1996 petition was filed. Now it is the prerogative of this Court to appoint a Sole Arbitrator who is equipped with requisite qualification and skills to decide the lis between the parties.

14. The Supreme Court has pressed upon the need to decide the petitions filed under Section 11 of the Act of 1996 expeditiously. Moreso, recently, the Supreme Court in **SBI General Insurance Co Ltd. v. Krish Spinning**³, has held that all that the Court is required to do when faced with Section 11(6) of the Act of 1996 is to examine that: (i) whether there exists an arbitration agreement between the parties and (ii) whether the petition under Section

¹ (2020) 20 SCC 760.

² 2024 SCC OnLine SC 3219.

³ 2024 SCC OnLine 1754.



11(6) has been filed within three (3) of the notice invoking arbitration. It is pertinent to note that the above said conditions are fulfilled in the present case.

15. As per the amended arbitration clause, exchanged and accepted between the parties on 23.09.2022 and 21.01.2023 the Arbitrator has to be appointed from the MoD panel of Arbitrators. In fact, with the aforesaid exchange of letters Clause 70 of GCC stands superseded.

16. This Court is unable to appreciate the submissions of the Respondent in opposing the appointment of the sole Arbitrator from the MoD panel of Arbitrator; as the same would be in conformity with the modified arbitration clause communicated in the letter dated 23.09.2022.

17. However, without creating any other controversy, Er. Rakesh Misra, Former DG CPWD [Mobile No.: 9958334545, Email ID: aarmisra@yahoo.com] is appointed as a sole Arbitrator. Er. Rakesh Misra, who is an empaneled Arbitrator with the DIAC and holds the degree of engineering which is the qualification contemplated in the amended arbitration clause, for adjudication of the disputes, therefore, the present petition is allowed and the following directions are passed:

18. The arbitration will be held under the aegis of the DIAC. The remuneration of the Sole Arbitrator shall be in terms of the Schedule IV of the Act of 1996.

19. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

20. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication of the Sole Arbitrator.



21. The Petitioner is directed to file its Statement of Claim within four (4) weeks. The Respondent will file its Statement of Defence within a period of four (4) weeks, thereafter.
22. List for preliminary hearing to be presided over by the Sole Arbitrator on 16.05.2025 at 10:30 A.M.
23. With the aforesaid direction, the petition stands disposed of.
24. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and to the Sole Arbitrator.
25. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

APRIL 9, 2025/mt

MANMEET PRITAM SINGH ARORA, J

[Click here to check corrigendum, if any](#)