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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. 395/2025

KANCHAN LAL

.....Petitioner

Through: Mr. Rajeev Kumar, Ms. Alka
Srivastava, Advs.

versus

DELHI TECHNOLOGICAL UNIVERSITY & ANR.Respondent

Through: Ms. Anju Bhushan Gupta, Mr.
Sanyam Gupta, Mr Aditya Goel,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
05.08.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The brief facts of the case are that the respondent No. 1 invited tender under the name and style of "Remodeling and Renovation of Health Centre (FOT) at DTU Campus". The petitioner, being the successful bidder, was awarded the work vide letter dated 22.06.2016. Pursuant to the award of work to the petitioner, the parties executed an Agreement dated 09.07.2016.
3. The Arbitration clause is Clause No. 25 of GCC.
4. Since there were disputes between the parties, the petitioner invoked arbitration, *vide* Legal Notices dated 14.09.2020, 14.12.2020 and



25.01.2022, and thereafter filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996.

5. When the matter came up for hearing before this Court on 18.01.2023, the petition was dismissed as withdrawn, as not pressed, since the petitioner sought the constitution of a Dispute Redressal Committee (DRC). In terms of Clause 25, the petitioner approached the DRC, which closed its proceedings on 22.09.2023. After discussing the broad contours of the disputes between the parties, the DRC, instead of finally settling the disputes in terms of the amount payable to the petitioner by the respondents, left it to the parties to mutually settle the same through the exchange of documents. Thus, upon closure of the DRC proceedings, the petitioner's grievances remained unresolved.
6. Due to this, the petitioner wrote to the respondents seeking settlement of disputes relating to labour escalation and measurement issues. This was followed by another letter dated 03.11.2023, wherein the petitioner even offered to settle his claim on labour escalation for a lower amount.
7. On 29.11.2023, the petitioner gave his undertaking to accept the DRC's decision and received the amounts awarded by the DRC.
8. However, as disputes remain unresolved, the petitioner seeks the appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.
9. Mr. Gupta, learned counsel for the respondents, has filed a reply. However, the same is not on record.
10. A copy of his reply is handed over in Court today, which is taken on record.



11. Mr. Kumar, learned counsel for the petitioner, submits that despite the DRC's attempt to resolve the disputes between the parties, the issues remained unresolved as the DRC did not finally determine the amounts payable to the petitioner and left them to be settled through mutual consent. It is further submitted that, since the petitioner was in dire need of funds owing to his worsened financial condition post-COVID and with substantial amounts due from the respondents, he was left with no option but to accept the amount offered by the respondents at that time, and such acceptance was given under economic duress.
12. It is also pointed out that before the DRC, the respondents alleged that the petitioner had settled his claims vide letter dated 03.04.2020, which, according to the petitioner, was forged and fabricated by officials of the respondents, for which he lodged a police complaint.
13. In view of the respondents' refusal, vide letter dated 29.01.2025, to appoint an arbitrator, the petitioner, being aggrieved by the non-resolution of his disputes, has been constrained to approach this Hon'ble Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.
14. Mr. Gupta, learned counsel appears on behalf of the respondents and states that the petition is not maintainable. He submits that the petitioner, along with final claims, had also submitted his consent/acceptance on the final claim of around 12.96 lakhs as per the decision of the DRC and the same was accepted without any reservation as per the letter dated 21.05.2024. The said letter is reproduced below:



DOCUMENT NO. 14

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JAI MAA KALI

KANCHAN LAL

ADD-D388 DURGA ENCLAVE PUNJAB KHORE DELHI-110051
GOVT. CONTRACTOR (C.P.W.D., PWD, DDA, DTTC AND
OTHER GOVT WORKS,
SPECIALTIES IN WATER PROOFING AND STRUCTURE WORKS

DATE:-
REFERENCE NO.- nil
PAN NO.-ACIPL8479J

GST NO.-07A0IPL8479J1ZW
MOBILE NO.-980611526/87

To,
The Chief Project Officer
Engineering Cell,
Delhi Technological University
Bawana Road, Delhi-110042.

Subject:- Regarding submission of final claim as directed by DRC for the work
"Remodeling of Health Centre FOT building premises on DTU Campus."

Reference:- DRC decision vide letter no. E No./DTU/CED 38/ Misc Committee
CConst/259/1448-55 dated 28.10.2023

Sir,

With reference to subject mentioned above, we hereby submitting our final claim as directed by DRC through MOM no. 1448-55 dated 28.10.2023 for amounting to Rs.12,96,020/- (Rs. Twelve Lakh Ninety Six Thousand and Twenty only). The rates and amounts are mutually finalized by undersigned and department as directed by DRC in their final decision. I also submit my consent/ acceptance on the final claim of Rs.12,96,020/-.

Hence, you are requested to kindly reimburse my claim as early as possible.

(M.s Kanchan Lal)

Kanchan Lal
GOVT. Contractor
C.P.W.D., DDA

Copy to :-

1. Chairmen DRC, DTU

530/CPD
21/5/2024
12/5/2024

15. Mr. Gupta, learned counsel, further submits that, as per Clause 25 of the GCC, Arbitration can be invoked only when a party is dissatisfied



with the decision of the DRC. In the present case, the petitioner had given his consent to the DRC's decision vide letter dated 21.05.2024, pursuant to which payments were made on 16.08.2024 and were accepted by the petitioner voluntarily and without any reservations, in full and final settlement of his claims. Therefore, it is contended that the petitioner is now estopped from invoking the arbitration clause.

16. It is further submitted that the present petition is barred under Clause 25 of the GCC, as the petitioner issued notice on 24.01.2025, well beyond the stipulated period of 30 days from the receipt of the DRC's decision and the payment made on 16.08.2024. It is also contended that the petitioner had earlier filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996, which was not unconditionally withdrawn, and therefore, in view of the judgment of the Hon'ble Supreme Court in **HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190**, a fresh petition is not maintainable. Mr. Gupta relies on the conclusion part of the above cited judgement which reads as under:

“131. In view of the aforesaid discussion, we have reached to the following conclusion:

- (i) In the absence of any liberty being granted at the time of withdrawal of the first application under Section 11(6) of the Act, 1996, the fresh application filed by the respondent under the same provision was not maintainable;*
- (ii) The fresh application filed by the respondent under Section 11(6) of the Act, 1996 was time-barred;*



(iii) The respondent is not entitled to the benefit of Section 14(2) of the Limitation Act; and

(iv) The respondent is also not entitled to the benefit of condonation of delay under Section 5 of the Limitation Act.

132. As a result, the appeal filed by the appellant is allowed and the impugned order passed by the High Court of Bombay is hereby set aside.

133. Pending application(s), if any, shall stand disposed of.

134. The parties shall bear their own costs.”

17. I have heard learned counsel for the parties.

18. Clause No. 25 of the GCC reads as under:

"Clause 25 - Settlement of Disputes & Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design,, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer In-Charge on any matter in connection with or arising out of the contract or



carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter. If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer Decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's Appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give



notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD. If the arbitrator appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

(iii) It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

(iv) It is also a term of this contract that no person, other than a person appointed by such Chief Engineer CPWD or Additional Director General or Director General, CPWD, as aforesaid, should act as arbitrator



and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

(v) It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be' discharged and released of all liabilities under the contract in respect of these claims.

(vi) The arbitration shall be conducted in accordance with the provisions of the Arbitration And Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

(vii) It is also a term of this contract that the arbitrator shall adjudicate on only such disputes are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

(viii) It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.”

19. In the present case, while it is true that the petitioner accepted the decision of the DRC, it cannot be overlooked that such acceptance may have been influenced by the petitioner's pressing financial needs. It is plausible that, in order to secure immediate payment, the petitioner made a statement indicating that the decision of the DRC



was acceptable, notwithstanding the possibility that the acceptance was not entirely voluntary but rather compelled by economic circumstances.

20. This aspect has been examined by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. M/s Boghara Polyfab Pvt. Ltd., (2009) 1 SCC 267***, where it was held that mere acceptance of payment or signing of a settlement under financial distress does not necessarily preclude a party from invoking arbitration, especially where such acceptance may have been made under compulsion or economic duress.

“42. We thus find that the cases referred to fall under two categories. The cases relied on by the appellant are of one category where the Court after considering the facts, found that there was a full and final settlement resulting in accord and satisfaction, and there was no substance in the allegations of coercion/undue influence. Consequently, this Court held that there could be no reference of any dispute to arbitration. The decisions in Nav Bharat [1994 Supp (3) SCC 83] and Nathani Steels [1995 Supp (3) SCC 324] are cases falling under this category where there were bilateral negotiated settlements of pending disputes, such settlements having been reduced to writing either in the presence of witnesses or otherwise. P.K. Ramaiah [1994 Supp (3) SCC 126] is a case where the contract was performed and there was a full and final settlement and satisfaction resulting in discharge of the contract. It also falls under this category.



43. The cases relied on by the respondent fall under a different category where the Court found some substance in the contention of the claimants that “no-dues/claim certificates”, or “full and final settlement discharge vouchers” were insisted and taken (either in a printed format or otherwise) as a condition precedent for release of the admitted dues. Alternatively, they were cases where full and final discharge was alleged, but there were no documents confirming such discharge. Consequently, this Court held that the disputes were arbitrable.”

21. The petitioner has also clearly stated in paragraph no. 19 of the petition that: -

“19.

That since the Petitioner was in dire need of monies as his financial conditions had worsened post COVID and his huge amount was stuck with the Respondent, he had no choice but to accept whatever monies was being offered by the Respondent at that point of time and thus the acceptance was given by the Petitioner under economic duress. It is pertinent to mention that before the DRC the Respondent had claimed that the Petitioner has settled his claims vide his letter, dated 03/04/2020 which according to the Petitioner was forged and fabricated by the officials of the Respondent for which the Petitioner also filed a Police Complaint. A copy of the Summary of Claims prepared by the Respondent is attached as Document No. 13 and the letter of acceptance submitted by the



Petitioner on 21/05/2024 is attached as Document No. 14.”

22. In view of the above, the petitioner’s acceptance of the DRC’s decision cannot be treated as a conclusive or binding settlement, as the same was allegedly made under economic duress and in circumstances indicating compulsion, thereby rendering such acceptance of no legal consequence for the purposes of estopping the petitioner from invoking arbitration.
23. Furthermore, the reliance placed by the respondents on the judgment of the Hon’ble Supreme Court in ***M/s HPCL Bio-Fuels Ltd. (supra)*** is misplaced. In the present case, the earlier petition, being ARB. P. 1246/2022 was withdrawn by the petitioner solely on the ground that it had been filed without first approaching the DRC, and not as an unconditional withdrawal on merits. Thereafter the petitioner approached the DRC and is still having pending disputes. Hence, the said judgment has no application to the facts of the present case.
24. Additionally, the contention of the respondents that the present petition is time barred because the petitioner issued the notice beyond the stipulated period of 30 days as mentioned under Clause 25 of GCC cannot be accepted. There are numerous judicial precedents wherein this Court has held that any pre condition in an Arbitration Agreement, obliging the parties to exhaust pre Arbitral Mechanism, is directory in nature and not mandatory.
25. This Court in ***Jhajharia Nirman Ltd. v. South Western Railways, 2024 SCC OnLine Del 7133*** held as under:



“18. In numerous judicial precedents, this Court has taken the view that any pre-condition in an arbitration agreement obliging one of the contracting parties to either exhaust the pre-arbitral amicable resolution avenues or to take recourse to Conciliation are directory and not mandatory.”

26. In view of this, non adherence to the stipulated period of 30 days by the petitioner is not fatal.
27. For the reasons stated above, the petition is allowed and the following directions are issued: -
- i) Mr. Sumit Chaudhary (Adv) (Mob. No. 966716035) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-



claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

28. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 5, 2025/sp