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

+ **ARB.P. 487/2025**

CONTINENTAL CARBON INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Gauhar Mirza, Ms. Sukanya
Singh & Mr. Rohit Rahar, Advs.

versus

AEIFORIA CONSTRUCTIONS PVT LTD

.....Respondent

Through: Mr. Mrinal Kumar Sharma, Mr.
Sharique Hussain, Mr. Veerbhadra &
Ms. Shiwani Anand, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

27.05.2025

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1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. The parties entered into an Agreement dated 01.04.2019 and its Addendum dated 22.08.2019 wherein the respondent was engaged for construction of a warehouse at Sanand, Gujarat.
3. In furtherance of the Agreement, the petitioner issued the following Purchase Orders (POs) to the respondent:-
 - i. PO-1 dated 05 April, 2019 for Phase-1 works amounting to INR 4.42 Crores.
 - ii. PO-2 dated 1 August 2019 for Phase-2 works amounting to INR 7.49 Crores.
 - iii. PO-3 dated 1 August 2019 for Phase-2 works amounting to INR 17.34 Lakhs.



4. As per the petitioner, the respondent failed to perform as per the Agreement.
5. The said Agreement read with Addendum contains an arbitration clause being Clause No.26(d) which reads as under:-

“26. **GENERAL**

.....

D. Arbitration: The parties shall attempt to resolve amicably through consultation any dispute controversy, difference or claim arising in any way whatsoever out of or in connection with this Agreement, including any question regarding its existence, interpretation, breach, termination or validity, or any dispute regarding non-contractual obligations arising out of or relating to disagreement (a “Dispute”). Such consultation shall begin immediately after one party has delivered to the other party a written request for such consultation in respect of the dispute. If within fifteen (15) days from the date of such written notice (or such longer period as agreed in writing by the parties) any Dispute is not resolved, the Dispute shall be submitted to arbitration in accordance with the following provisions:”

6. Thereafter, the petitioner invoked Arbitration vide Legal Notice dated 09.01.2025.
7. Mr. Hussain, learned counsel appears for the respondent and has advanced two submissions:-
 - i. That the claims of the petitioner are barred by limitation.
 - ii. That the petitioner was required to undertake the exercise of conciliation before invoking Arbitration in terms of Clause 26 (D).
8. As per the petitioner, the claims of the petitioner crystallised on



08.12.2022 and the Notice invoking Arbitration was sent within three years i.e. 09.01.2025. Hence, *prima facie*, the claims of the petitioner seem to be within limitation.

9. As regards the effort for amicable settlement is concerned, the notice dated 08.12.2022 issued by the petitioner reads as under:

"I am sending the present Notice of amicable resolution ("Notice") to you on behalf of Continental Carbon India Pvt. Ltd., formerly known as Continental Carbon India Ltd. ("CC IPL") having its registered office at Unit No. FF-05, First Floor, Omaxe Square, Jasola District Centre, New Delhi-110025 and its Works office at A-14, Industrial Area No. 1, South Side of G.T. Road, Ghaziabad- 201009, Uttar Pradesh. The present email may be treated as a written request for consultations to amicably resolve the disputes under Clause 26D of the Agreement dated 1 April 2019 ("Agreement"). The Agreement was executed between CC IPL and Aeiforia Constructions Pvt. Ltd. ("ACPL"). CC IPL and ACPL are collectively, hereinafter, referred to as the "Parties".

ACPL through Director, Mr. Bhupendra Kumar represented to CC IPL that ACPL is in the business of architecture, civil and interior works and turnkey infrastructure projects, and approached CC IPL to enter into a business relationship for the construction of a warehouse at Sanand, Gujarat, situated at Plot No. E-248 and E-249, Sanand-11, Industrial Estate, Hirapur, Ahmedabad, Gujarat-382110 ("the



Project"). As per the Agreement, the scope of work of the Project was divided into Phase 1 and Phase 2. Based on the representations and assurances made by ACPL, CCIPL entered into the Agreement for the execution of Phase 1 of the Works, the construction of the warehouse and other related works pertaining to Phase 1 of the Project. Thereafter, the scope of the Agreement was extended vide an Addendum dated 22 August 2019 ("Addendum") executed between CCIPL and ACPL, pertaining to Phase 2 of the Project.

Notably, ACPL has failed to complete the works under the Agreement and the Addendum despite various opportunities being afforded to it. Whereas, it is stated that CCIPL duly fulfilled its obligations under the Agreement and its Addendum, to the extent that they arose.

In light of the defaults of ACPL, we call upon ACPL to immediately complete the pending works at the Project and make good the losses and damages suffered by CCIPL on account of ACPL's defaults.

Notably, CCIPL has undertaken good faith discussions and endeavored to resolve the disputes with ACPL vide numerous communications in the past as well. However, ACPL has failed to make good its defaults at every instance. To illustrate, vide email dated 22 June 2021, CCIPL requested ACPL to resume work as per their agreed terms and reiterated that the Security Bond dated 9 April 2021 was



signed in the month of April, after which work was supposed to resume within 7 (seven) days. However, ACPL continued to breach its obligations under the Agreement and its Addendum.

As such, CCIPL hereby puts ACPL to notice that a dispute has arisen, and the process of amicable resolution is hereby initiated in accordance with the provisions of Clause 26D of the Agreement.

This Notice is without prejudice to any of the rights and remedies that may be available to CCIPL under law or equity, which rights and remedies are, hereby, expressly reserved. This Notice does not, and will not, affect or prejudice the rights of CCIPL to take such action (s) as it considers appropriate under law.”

10. A perusal of the aforesaid Notice clearly shows that the petitioner duly complied with the condition of Clause 26(D) by initiating the process of amicable resolution, however, the respondent failed to participate in the same.
11. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Ms. Justice Hima Kohli (Retd. Judge of the Supreme Court) (Mob. No. 9871300036) 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, legal 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 four weeks from today.

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

JASMEET SINGH, J

MAY 27, 2025/pk

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



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