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

+ **ARB.P. 629/2025**

**M/S PRAGATI CONSTRUCTION CONSULTANTS**

.....Petitioner

Through: Mr. Vipul Garg, Adv.

versus

**NORTHERN RAILWAYS**

.....Respondent

Through: Mr. Ruchir Mishra Mr. Mukesh Kr  
Tiwari. Ms. Reba Jena Mishra, Ms. Poonam  
Shukla, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**11.08.2025**

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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 for adjudication of disputes between the parties arising out of the Letter of Acceptance dated 20.02.2020 and the Agreement dated 22.06.2020 executed between the parties.
2. The facts are that the petitioner participated in the tender for execution of work of "Construction of a two-lane Road Over Bridge in lieu of existing Level Crossings No. 75 at KM 156/7-8, 78 at KM 163/13- 14, 79 at KM 165/5-6, 84 SPL at KM 175/12-14, and 84-AC at KM 177/13-15, with Bow String Girder/Bow Shaped Truss, along with the construction of LHS by the pushing method and other allied works on



the GZB-SRE section” and vide Letter of Acceptance dated 20.02.2020 was awarded the project. Thereafter, the parties executed the Agreement on 22.06.2020, incorporating the terms and conditions of the GCC, which contained an Arbitration Clause, being Clause No. 64, which reads as under: -

**“64.(3) : Appointment of Arbitrator:**

**64.(3)(a) : Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:**

*64.(3)(a)(i): In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.”*

3. The respondent subsequently issued a Completion Certificate dated 02.09.2024, acknowledging the satisfactory execution and completion of the project by the petitioner.
4. Thereafter, the petitioner vide letter dated 21.10.2024 invoked Arbitration and sought the resolution of disputes arising out of the Agreement dated 22.06.2020, on account of the non-resolution of



multiple claims, despite repeated assurances by the respondent over the preceding two years. Since the Arbitrator was not appointed to resolve the disputes, the present petition has been filed before this Court.

5. Mr. Garg, learned counsel for the petitioner states that the petitioner was subjected to financial and economic coercion/duress, being compelled to issue “No Claim Letters” on 21.06.2024, and the respondent procured the petitioner's signatures on blank formats of Final Bills and Supplementary Agreements as a condition precedent for processing and releasing admitted dues, thereby vitiating the petitioner's consent.
6. It is further stated that the respondent, by letter dated 27.02.2025, acknowledged the disputes and agreed to refer the matter to arbitration, but made it conditional on the petitioner waiving Sections 12(5) and 31(5) of the Arbitration and Conciliation Act. The petitioner, by letter dated 04.03.2025, rejected this waiver, citing the Supreme Court’s judgment in ***Central Organisation for Railway Electrification v. EC/SPIC SMO MCML (JV) (2024 SCC OnLine SC 3219)***, which invalidated such unilateral appointment mechanisms. Despite this, the respondent, on 01.04.2025, proposed a panel of retired Railway Officers for selection by its General Manager. Thus, no consensus could be reached on the appointment of the arbitrator.
7. Mr. Mishra, learned counsel for the respondent, has handed over a supplementary agreement dated 30.07.2024 in Court today, which reads as under:-



### SUPPLEMENTARY AGREEMENT

Articles of Agreement made this 30th of JULY in the year 2024 between the President of India, acting through the Chief Engineer/Const./Spl., Northern Railway Administration having his office at Kashmere Gate, hereinafter called the Railway of the one-part M/s. Pragati Construction Consultants, 28/12, East Punjabi Bagh, Main Ring Road, New Delhi.

Whereas the party hereto of the other part executed an agreement with the party hereto of the first part being agreement No.74-W/1/2/368/WA/CSB-II dt. 22.06.2020 for the performance of "Construction of two lane Road Over Bridge in lieu of existing Level Crossing No.75 at Km.156/7-8, 78 at Km.163/13-14, 79 at Km.165/5-6, 84-AC at Km.177/13-15 and 84 Spl. at Km.175/12-14 with Bow String girder/Bow shaped Truss alongwith Construction of LHS by pushing method and other allied works on GZB-SRE section of Delhi Division here is after called principal agreement.

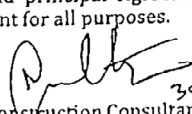
And where as it was agreed by and between the parties hereto that the works would be completed by the party hereto of the second part on 30.07.2023 date last extended and whereas the party hereto of the second part has executed the work to the entire satisfaction of the party hereto of the first part And whereas the party hereto of the first part already made payments of the party hereto of the second part diverse sums from time to time aggregating to Rs.52,25,43,551.22 including the final bill bearing Vr. No. 601/06/2024 dated. 21/06/2024 (the receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all his, its claims under the principal Agreement and whereas the party hereto of the second part have received further sum of Rs.2,20,01,932.00 through the final bill bearing Vr. No. 601/06/2024 dated. 21/06/2024 (the receipt of which is hereby acknowledged by the party thereto of the second part) from the party hereto the first part in full and final settlement of all his/its disputed claims under Principal Agreement.

Now it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the party hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid principal Agreement including/excluding the security deposit, the party hereto of the second part have no further dues of claims against the party hereto the first part under the said principal agreement.

It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said principal agreement.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clause.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal Agreement shall cease to have any effect and /or shall be deemed to be nonexistent for all purposes.

  
Pragati Construction Consultants,  
28/12, East Punjabi Bagh, Main  
Ring Road, New Delhi.

  
Dy. Chief Engineer/Const-II  
Shivaji Bridge, New Delhi.

Chief Engineer/Const./Spl.  
N. Rly., Kashmere Gate

Witness of the Signature.

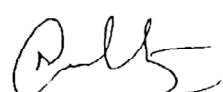
1. 

2. 

Witness of the Signature

1. \_\_\_\_\_

2. \_\_\_\_\_

Measurement accepted Final & Final with No claim except GST reimbursement  
12 to 18% short payments  
 30/07/2024



8. He states that in the present case, as per the Supplementary Agreement, the petitioner has accepted the entire payment made by the respondent in full and final settlement of its claims and has stated that the agreement stands finally discharged and all terms and conditions, including the Arbitration Clause, stand rescinded. He also states that the petitioner has intentionally and *malafidely* not mentioned the said Supplementary Agreement as entered between the parties dated 30.07.2024.
9. He further states that there are no disputes between the parties and assuming that the petitioner has any grievance, his remedy lies in filing a civil suit.
10. I have heard learned counsels for the parties.
11. The purported date of the Supplementary Agreement is 30.07.2024.
12. Even though the respondent, in the aforementioned supplementary agreement, stated that “the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes,” it nevertheless issued a letter dated 27.02.2025 seeking the petitioner’s waiver of Sections 12(5) and 31(5) of the Arbitration and Conciliation Act, 1996. This clearly demonstrates the respondent’s intention to proceed with arbitration and its acknowledgment of the continued existence of the arbitration clause, namely Clause 64 of the GCC.
13. In response to the aforesaid letter, the petitioner, vide letter dated 04.03.2025, stated that it did not agree with the appointment procedure prescribed under Clause 64 of the GCC, as it required the appointment of an Arbitrator from the panel maintained by the



Railways/Respondent. The petitioner stated in the letter that this procedure is no longer valid, given the settled position of law that an independent and impartial Arbitral Tribunal must be constituted, placing reliance on the judgment of ***Central Organisation for Railway Electrification (supra)***. The petitioner further declined to waive the applicability of Sections 12(5) and 31(5) of the Arbitration and Conciliation Act, 1996, and insisted on the appointment of an independent arbitral tribunal.

14. To the above-stated letter of the petitioner, the respondent replied, *vide* letter dated 01.04.2025, requesting the petitioner to suggest at least two names out of the panel nominated for selection of the petitioner's nominee, out of a panel of four retired Railway officers.
15. The letters dated 27.02.2025 and 01.04.2025 are reproduced as under: -



**Regd-Speed Post/By Hand/Email**

**NORTHERN RAILWAY  
(Construction Organization)**

**Headquarters Office,  
Kashmere Gate,  
Delhi**

**Dated:- 27-02-2025**

**No: 117-A/Cs/Dy CE/C-II/CSB (Comp. No.-290218)**

**✓ M/s Pragati Construction Consultants  
28/12, East Punjabi Bagh,  
Main Ring Road,  
New Delhi-110026**

**Sub :- Demand for Arbitration relating to the work "Construction of two lane Road Over Bridge in lieu of existing Level crossing No. 75 at Km.163/13-14, 79 at Km 163/ 13-14, 79 at Km 165/5-6, 84-AC at Km.177/13-15 and 84 Spl. at Km 175/12-14 with Bow String girder/Bow Shaped Truss along with construction of LHS by- pushing method and other allied works on GZB-SRE section". (Agreement no. 74-W/1/2/368/WA/CSB-II dt.22.06.2020)**

**Ref :- 1) Railway Board's letter No.2015/CE-I/CT/ARB/18 dated 11-11-2016  
2) M/s Pragati Construction Consultants letter no. PCC-71/ROB-LHS/TLH-SRE dated 21-10-2024.**

**In reference to your request for appointment of Arbitrator, the case was processed. However, modification to Clause 64 of General Condition of Contract- 2014 has been issued vide Railway Board letter referred (i) above. Accordingly, for appointment of Sole Arbitrator/Arbitral Tribunal in Railway, waiver off Clause 12(5) & 31(5) of Arbitration & Conciliation Act is required on the enclosed Performa No. Annexure-XII.**

**You are, therefore, requested to fill up the Annexure-XII and send it back to this office for appointment of Arbitrator by this Railway, if you agree for waiver off clause 12(5) & 31(5) of Arbitration & Conciliation Act within 15 days.**

**Your reply is urgently required for early appointment of Arbitrator.**

**DA/As above.**

**(Piyush Kumar Mishra)  
Dy.Chief Engineer/C/G-I**  
27/02/25



**Regd-Speed Post/By Hand**

**NORTHERN RAILWAY  
(Construction Organization)**

HEADQUARTER OFFICE,  
KASHMERE GATE,  
DELHI-110006.

No. 74-W/1/2/368/WA/CSB-II

Dated :- 01-04-2025

M/s Pragati Construction Consultants,  
28/12, East Punjabi Bagh,  
Main Ring Road, New Delhi-110026

Sub :- Invocation of Arbitration clause for the work of "Construction of two lane Road Over Bridge in lieu of existing Level Crossing No.75 at Km.156/7-8, 78 at Km.163/13-14, 79 at Km.165/5-6, 84-AC at Km.177/13-15 and 84 Spl. at Km.175/12-14 with Bow String girder/Bow shaped Truss alongwith Construction of LHS by pushing method and other allied works on GZB-SRE section. (Agreement No. 74-W/1/2/368/WA/CSB-II dt. 22.06.2020)

Ref:- (1) Dy CE/Genl/N.Rly HQ's Letter No.W-1/11/35/Misc letter/2024 dated 06-11-2024  
(2) Contractor letter No. PCC-71/ROB-LHS/TLH-SRE dated:-21.10.2024

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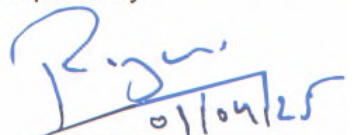
Dear Sir's,

This is in reference to your letter cited above, the General Manager, Northern Railway, Baroda House, New Delhi has nominated a panel of following four retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer to suggest at least two names out of the panel and there after G.M. will appoint one out of them to act as your nominee:-

The following panel is nominated for selection of contractor's nominee as per GCC clause no. 64 (3) (b) (ii)

1. Shri Alok Ranjan, Retd. AM/CE, RB
2. Shri T.P.Singh, Retd. General Manager/NR
3. Shri Subhash Kumar Singla, Retd CSO/WR
4. Shri K. Rama Subramonia Pillai, Retd. FA&CAO/S&W/ PER/SR

You are, therefore, requested to suggest at least two names out of the above panel, to be appointed as Co-Arbitrator as your nominee by the General Manager, Northern Railway, within 15 days from the date of issue of this letter positively.

  
(Piyush Kr. Mishra)  
Dy. Chief Engineer/C/G-I  
for General Manager.



16. The petitioner, *vide* letter dated 04.03.2025, had also stated that it had raised an objection regarding the respondent coercing the petitioner to sign various documents under duress.
17. *Prima facie*, I am of the view that the Supplementary Agreement dated 30.07.2024 is one such kind of document.
18. The very fact that the petitioner states that there are disputes between the parties which have not been settled is a reason enough for this Court to refer the parties to Arbitration. Additionally, even if there is an allegation of economic coercion or duress raised by the petitioner, the mere execution of a full and final settlement receipt/discharge voucher in favour of the respondent would not by itself operate as a bar to arbitration, when the validity of such a receipt or voucher is challenged on the grounds of fraud, coercion, undue influence or economic duress. Reliance is placed on ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, more particularly on paragraphs 57 and 58 which read as under:

*“57. The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In Boghara Polyfab (supra), discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are*



*validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no dues certificate is rendered void and cannot be acted upon.*

*58. It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not ad idem over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute.”*

19. For the said reasons, the petition is allowed and the following directions are issued: -

- i) Ms. Justice Rekha Palli (Former Judge, Delhi High Court) (Mobile No 9810012120) 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.
20. The present petition is disposed of in the aforesaid terms.

**AUGUST 11, 2025 / (MS)**

**JASMEET SINGH, J**