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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 654/2025 & I.A. 11181/2025**
M/S KAMLADITYYA CONSTRUCTION PVT LTD

.....Petitioner

Through: Mr. Avinash Trivedi, Adv. Mr. AK
Trivedi, Adv. Ms. Ritika Trivedi, Adv. Mr. Rahul
Aggarwal, Adv. Mr. Anurag Kaushik, Adv. Mr.
Rhythem Nagpal, Adv. Mr. Jatin Arora, Adv.

versus

CENTRAL PUBLIC WORKS DEPARTMENT

.....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**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a nominee Arbitrator on behalf of the respondent.
2. The petitioner was declared as the successful bidder by the respondent for the work of "*Construction of Vice President Enclave at New Delhi including Operation & Maintenance for 5 years*", vide Letter of Acceptance dated 15.11.2021, for the construction work of the project and included operation and maintenance for 5 years. In pursuance thereto an Agreement was also executed between the parties for the subject work, dated 07.02.2022.
3. The construction work was ultimately completed to the satisfaction of



the respondent on 06.06.2024 and was also conveyed to the petitioner, *vide* its letter dated 07.06.2024 and the Supplementary Agreement for maintenance work in the said project for a period of 5 years, came into effect from 07.06.2024.

4. The arbitration clause, is Clause No. 25 of the GCC, which 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 or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is*



disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/ CPM, or where there is no Chief Engineer/CPM, request the Additional Director General/Special Director General, who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on



expiry of aforesaid the time limits available to DRC/ADG/SDG, may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/CPM, the Additional Director General/Special Director General concerned or if there be no Additional Director General/Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

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.

The CE/ADG/SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/SDG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of
(a) A party fails to appoint the second Arbitrator, or
(b) The two appointed Arbitrators fail to appoint the



Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.

- (ii) *Dispute or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.*

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/SDG on the finding/recommendation of DRC.

...

The arbitrator shall adjudicate on only such disputes as 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.

..."



5. Since there were disputes, the petitioner invoked the process of arbitration under Clause no. 25 of the GCC, *vide* legal notice dated 16.01.2025, and intimated the respondent about its nominee arbitrator. However, the respondent failed to appoint its nominee Arbitrator and hence the present petition was filed on 18.04.2025 as per the filing log. The same was also assigned to a dealing clerk On 21.04.2025.
6. Mr. Mishra, learned counsel for the respondent, submits that in the present case, the respondent had already initiated the process of appointing its nominee arbitrator and draws my attention to paragraph 13 of its reply, wherein it is stated that the petitioner's request for appointment of the arbitrator was processed by the department *vide* letter dated 17.04.2025. Eventually, the respondent constituted an Arbitral Tribunal, including the appointment of its nominee Arbitrator, *vide* letter dated 22.04.2025. It is further submitted that the nominee Arbitrator was appointed by the respondent prior to the filing of the present petition.
7. Mr. Trivedi, learned counsel for the petitioner, states that once the petition under Section 11 was filed before this Court, the right of the respondent with respect to the appointment of its nominee arbitrator has been foregone.
8. I have heard the learned counsel for the parties and seen the filing log in the present matter.
9. The defects were marked on 21.04.2025 and the petition was refiled on 22.04.2025. The same is clearly before the letter of the respondent dated 22.04.2025, in which the respondent intimated the petitioner about the constitution of the Arbitral Tribunal, including the appointment of its nominee Arbitrator as well.



10. The law in this regard is settled by the Hon'ble Supreme Court in the case of ***Datar Switchgears Ltd. v. Tata Finance Ltd. (2000) 8 SCC 151*** and the operative portion reads as under: -

“11. The question then arises whether for purposes of Section 11(6) the party to whom a demand for appointment is made, forfeits his right to do so if he does not appoint an arbitrator within 30 days. Learned Senior Counsel for the appellant contends that even though Section 11(6) does not prescribe a period of 30 days, it must be implied that 30 days is a reasonable time for purposes of Section 11(6) and thereafter, the right to appoint is forfeited. Three judgments of the High Courts from Bombay, Delhi and Andhra Pradesh are relied upon in this connection.

19. So far as cases falling under Section 11(6) are concerned — such as the one before us — no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the court under Section 11, that would be sufficient. In other words, in cases arising under Section 11(6), if the



opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator under Section 11(6) is forfeited.

20. In the present case the respondent made the appointment before the appellant filed the application under Section 11(6) though it was beyond 30 days from the date of demand. In our view, the appointment of the arbitrator by the respondent is valid and it cannot be said that the right was forfeited after expiry of 30 days from the date of demand.”

11. Similarly, this Court in **Zion Promoters & Developers Pvt. Ltd. v. Ferrous Infrastructure Pvt. Ltd.**, 2016 SCC OnLine Del 1668 has held as under:

“6.7. The right to appoint an arbitrator by the Managing Director of respondent No. 1 ceased upon filing of this petition under Section 11(6) of the Arbitrator and Conciliation Act on 15th July, 2016. Applying the principles laid down by Supreme Court in Datar Switchgears Ltd. v. Tata Finance Ltd. (supra), Union of India v. Bharat Battery (supra) and Deep Trading Company v. Indian Oil Corporation (supra), it is held that the appointment of the arbitrator by the Managing Director of



respondent No. 1 after the filing of this petition is not valid.”

12. The judgment of the Hon’ble Supreme Court in the case of ***Durga Welding Works v. Chief Engineer, Railway Electrification, Allahabad and Another*** (2022) 3 SCC 98 relied upon by the counsel for the respondent does not come to their aid, as in that case, the petitioner after filing the arbitration petition, slept over the matter and did not take any steps.
13. Thus, the position that emerges is that the respondent has forfeited its right to appoint the arbitrator upon filing of the petition under Section 11(6) and, therefore, the appointment of the arbitrator during the pendency of the proceedings is of no consequence.
14. In the present case, I am satisfied that the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, was filed by the petitioner before issuance of the letter dated 22.04.2025 and hence, the respondent has foregone its right to appoint its nominee arbitrator.
15. Accordingly, besides the petitioner’s nominee arbitrator, Mr. Rakesh Kumar Agrawal (Mob: 7542030167) is appointed as respondent’s nominee arbitrator and both the petitioner’s nominee as well as respondent’s nominee arbitrators shall appoint the Presiding Arbitrator, preferably within 2 weeks from today.
16. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 11, 2025 / (MS)