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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1421/2025**
M/S NSC PROJECTS PVT LTD

.....Petitioner

Through: Ms Kanika Singh, Mr Aridaman
Raghuvanshi, Ms Radhika Jindal Mr Nikhil Saini,
Advs.

versus

AIRPORTS AUTHORITY OF INDIA

.....Respondent

Through: Mr. Digvijay Rai, SC with Mr. Archit
Mishra and Mr. Abhishek Singh Advs. for
Respondent / AAI with Mr. Gagan Kochar, Senior
Manager, Ms. Kashish Singhal, JE (Law) and
Ms. Pragya Bansal, JE (Law)

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
25.09.2025

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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.
2. The facts are that the respondent had invited tenders for work of runway, re-carpeting and strengthening and fixing central line lights including allied civil and electrical work at Calicut Airport. The petitioner was the lowest bidder and was issued a Letter of Acceptance (“LoA”) on 24.11.2022. Thereafter, the parties also entered into an Agreement dated 30.11.2022.
3. Clause No. 25 of the Clauses of contract is the arbitration clause,



which reads as under-

“Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction 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 work 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 requirement of the contract, or disputes any drawing, 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 ~~Executive Director (Engg.)~~/Regional ~~Executive Director/Member (Plg)~~ /Chairman, AAI as the case may be, who shall refer the dispute to Dispute Redress a I Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any, in respect of each such disputes. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for written response, and 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 the ~~Executive Director (Engg.)~~/Regional ~~Executive Director~~/Member (Plg)/ Chairman, AAI. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/ legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, 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 ~~Executive Director (Engg.)~~ Regional ~~Executive Director~~/Member (Plg)/ Chairman, AAI as the case may be for appointment of Arbitrator on prescribed proforma as per Appendix-XVII. under intimation to the other party.

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

The ~~Executive Director (Engg.)~~/Regional ~~Executive Director~~/Member (Plg) /Chairman, AAI 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 ~~Executive Director (Engg.)~~/Regional ~~Executive Director~~/ Member (Plg) /Chairman, AAI 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 Member (Plg)/ Chairman, AAI shall appoint the second or Presiding Arbitrator as the case may be*

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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 disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC. It is also term of this contract that any member of Arbitration Tribunal shall be a graduate engineer with experience in handling public works, engineering contracts at a level not lower than Chief Engineer. This shall be treated as mandatory qualification to be appointed as Arbitrator...”

4. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 28.05.2025 and thereafter the present petition has been filed.
5. Mr. Rai, learned Standing Counsel for the respondent, states that the reply has been filed on behalf of the respondent which is not on record. A copy of the same has been handed over in Court today which is taken on record. A perusal of the reply shows that the arbitration clause mandated that the dispute should first be resolved by the Dispute Resolution Committee (“**DRC**”). The DRC has been constituted and is seized of the matter. Hence, the petition should not be prosecuted any further.



6. I have heard the learned counsel for the parties.
7. On 24.03.2025, the petitioner wrote a letter to the respondent seeking constitution of the DRC. As per the reply, the DRC has only been constituted on 01.08.2025. A perusal of the said clause shows that the DRC is to be constituted within 15 days from the request made by an aggrieved party. The DRC further is required to give its decision within 60 days (extendable by 30 days). In case there is no communication by the DRC, the aggrieved party is to invoke the arbitration clause.
8. Calculating 90 days (+15 days = 105 days) from 24.03.2025 shows that the constitution of the DRC on 01.08.2025 was beyond the date fixed in the Contract.
9. Additionally, the respondent has already invoked the bank guarantees of the petitioner amounting to Rs. 3,38,78,000/- and hence, the reference of disputes to DRC is an empty formality.
10. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Justice Jayant Nath, (Retired Judge, Delhi High Court) (Mob. No. 8527959494) 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.

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

SEPTEMBER 25, 2025 / (MS)

JASMEET SINGH, J