



2025:DHC:9814



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

+ ARB.P. 1412/2025 and I.A. 22263/2025, I.A. 22264/2025

Date of Decision: **17.10.2025****IN THE MATTER OF:**

M/S NARESH KUMAR GUPTA AND CO PVT LTD

.....Petitioner

Through: Mr. Mayank Goswami, Adv.

versus

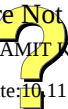
UNION OF INDIA

.....Respondent

Through: Mr. Dinesh Malik, Mr. Puneet Jain  
and Mr. Kailash Meena, Advs.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. Heard.
3. Learned counsel for the parties submit that reserving all rights and contentions of the parties, the Court may consider to appoint an independent arbitrator.
4. The facts of the case would indicate that the disputes and differences

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arising out of Agreement No. 06/BPD/M-242/2013-14 dated 31.12.2013. Due to the reallocation of work to a different division, the work was subsequently allotted under Agreement No. 03/EE(C)/CBMD/M-232/2014-2015. In accordance with Clause 25 of the original agreement, all disputes relating to the execution of work, quality of workmanship, or any other matter under the contract were required to be addressed first with the Superintending Engineer, then the Chief Engineer, and finally, if unresolved, through arbitration by a Sole Arbitrator appointed by the Chief Engineer. The petitioner had entered into the contract for construction of a pucca school building for Govt. Senior Secondary School at Khichurpim Village, Delhi, for a total contract value of Rs. 9,04,63,810/-, with stipulated start and completion dates of 14.01.2014 and 13.04.2015, respectively. The petitioner completed the project on 15.07.2016 and submitted the Statement of Claims for final payment and other amounts due, but despite repeated communications, the respondent failed to make the payment or properly appoint an arbitrator as required under the agreement.

5. The facts of the case would further indicate that, in an attempt to resolve the dispute amicably, the petitioner sent a legal notice dated 19.12.2018 invoking Clause 25 of the agreement, requesting the appointment of an arbitrator. The respondent, however, delayed the process and appointed an arbitrator in a manner inconsistent with the agreement, leading the petitioner to pursue arbitration proceedings. The Sole Arbitrator passed an award dated 30.05.2020 in favor of the petitioner for Rs. 98,58,586/-, which the respondent partially paid but subsequently challenged under Section 34 of the Act. Although the challenge was initially dismissed for limitation reasons, it was later restored and ultimately allowed by the

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respondent's intervention, on grounds contested by the petitioner. The petitioner has now approached this Court seeking the fresh appointment of a neutral arbitrator under Section 11 of the Act to adjudicate the pending disputes, as the respondent has failed to appoint a proper arbitrator in accordance with the terms of the contract.

6. It is submitted that there exists a arbitration clause which is Clause 25 of the arbitration, and the same is extracted as under:

*“Clause 25*

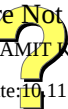
*Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or 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 this decision, the contractor shall within a period of 30 days from receipt of the decision, 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:*

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(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 of Works, CP WD. If the arbitrator so 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.

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 alongwith the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

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 of works, 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.

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.

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.

It is also a term of this contract that 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.

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.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid

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*half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.""*

7. Under these circumstances with the consent of the parties, and in view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Mr. Justice Ali Mohammad Magrey, former Chief Justice of the High Court of Jammu & Kashmir and Ladakh (Mobile No: +91 6005509928, e-mail id: [Justicemagrey@gmail.com](mailto:Justicemagrey@gmail.com)) as the sole Arbitrator.
8. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.
9. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
10. The parties shall share the arbitrator's fee and arbitral cost, equally.
11. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.
12. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the Sole Arbitrator through the electronic mode as well.
13. Accordingly, the instant petition stands disposed of along with

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pending applications.

**PURUSHAINDRA KUMAR KAURAV, J**

**OCTOBER 17, 2025**

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