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

+ **ARB.P. 1657/2025**

M/S CONARCH ASSOCIATES THROUGH ITS PARTNER

.....Petitioner

Through: Ms. Priyanka Jain, Advocate

versus

IRCON INTERNATIONAL LTD

.....Respondent

Through: Ms. Kanupriya Bhargava and Mr.
Pranav Goswami, Advocates
Mr. Rohit Chandra and Mr. Shivam
Bhakuni, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.11.2025

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1. The present Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 [**“Arbitration Act”**] seeking appointment of an Arbitrator to adjudicate the disputes which have arisen between the parties under a Contract Agreement dated 02.12.2019.

2. Material on record indicates that the Petitioner, being the successful bidder, was awarded a contract for “Supply of Ballast from India to Phultala and Mongla in Bangladesh in connection with construction of Khulna-Mongla Port Rail Link Project in Bangladesh” by the Respondent. The total value of the Contract was about USD 3,245,000.00 for supply of 50,000 Cum of Track Ballast at rate of USD 64.90/Cum i.e., approximately ₹28,81,92,372.23/-.



3. Clause 73 of the General Conditions of Contract [“GCC”] contains the Dispute Resolution mechanism under the Contract. The same are reproduced below for reference:

“Mutual Settlement All such disputes or differences shall in the first place be referred by the Contractor to the Engineer in writing for resolving the same through mutual discussions, negotiations, deliberation etc. associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.”

Clause 73.3.1–which reads

“Chairman and Managing Director of the Employer will appoint a on conciliator receipt of a written and valid demand for conciliation. The entire process of appointment of Conciliator and communicating to the parties in writing shall be completed within 60 days from the date of receipt of written and valid demand for conciliation.”

Clause 73.3.3 –which reads

“The conciliator shall assist the parties for settlement of the dispute. If it appears that there exist elements of settlement between parties, the conciliator shall formulate the terms of a possible settlement and submit to the parties for their observations. On receipt of observations of parties, the conciliator shall reformulate settlement. and draw terms the written sign of final conciliation”.

Clause 73.6 –which reads

“Arbitration Tribunal:



In cases where the total value of all claims added together exceeds 25.00 Crore, the Arbitral Tribunal shall consist of a panel of three arbitrator.

73.6.1 For this purpose, the Employer will send a panel of at least three (3) names to the contractor, within 60 days from the day when a written and valid demand for arbitration is received in the office of Chairman and Managing Director of the Employer. Contractor shall communicate suggest in writing to the Chairman and Managing Director of the Employer one (1) name out of the given panel for appointment an contractor's nominee within 15 days from the date of receipt of the panel from the Employer. The Chairman and Managing Director of the Employer shall appoint the contractor's nominee arbitrator as per the name suggested by the contractor and will, also simultaneously appoint the balance number of arbitrators from outside the panel sent to the contractor duly indicating the 'presiding arbitrator' from amongst the three (3) arbitrators so appointed. The Chairman and Managing Director of the Employer shall complete this exercise of appointing Arbitral Tribunal within 15 days from receipt of the name of contractor's nominee."

4. Disputes arose between the parties, pursuant to which a notice invoking arbitration dated 19.01.2023 under Section 21 of the Arbitration Act was sent by the Petitioner to the Respondent as per Clause 73 of the GCC.

5. The Notice dated 19.01.2023 was replied to by the Respondent *vide* letter dated 14.02.2023, rejecting the invoking of arbitration, stating that since Clauses 72 and 73 apply only to tender valuing more than ₹100 crores, the invocation of arbitration was contrary to the provisions of the Contract



between the parties.

6. Resultantly, the Petitioner has approached this Court seeking the appointment of an arbitrator to adjudicate upon the disputes between the parties.

7. Notice in the present Petition was issued on 13.10.2025.

8. Learned Counsel for the Respondent, while opposing the present Petition, has drawn attention of this Court to a Note contained in the GCC pertaining to Clauses 72 and 73 of the GCC, to submit that Clauses 72 and 73 are not applicable to tenders valuing up to ₹ 100 crores. The Note reads as under:

“Following Clause No. 72.0 and 73.0 shall not be applicable for tender valuing up to ₹100 Crore (Rupees One Hundred Crores)”,

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9. *Per contra*, learned Counsel for the Petitioner submits that there are arbitration proceedings going on between the same parties for other projects involving supply of Ballast from India to Nepal. It is further stated that after the disputes have arisen, the parties have adopted to resolve the disputes mutually as envisaged under the Dispute Resolution Clause, however, no amicable resolution could take place. It is stated that once the parties have decided to follow the procedure to resolve their *inter-se* disputes under the GCC, it should be understood that the parties have agreed to get their disputes through arbitration.

10. This Court is not inclined to accept the arguments advanced by the learned Counsel for the Petitioner.

11. The parties have decided that the disputes arising out of tenders over



valuing more than the sum of ₹100 crores would be adjudicated through arbitration, meaning thereby, the parties have decided to exclude arbitration to all tenders below ₹100 crores.

12. The learned Counsel for the Respondent has drawn attention of this Court to Clause 73.6 of the GCC which states that claims of ₹25 crores or more would be decided through by a panel of three arbitrators. Even though the claims of the Petitioner would be more than ₹25 crores but since the tender is below ₹100 crores, therefore, the arbitration mechanism is not applicable for adjudication of disputes. The present Petition, therefore, fails.

13. It is open for the Petitioner to resort to such other remedies as available under the law. Needless to state, the time spent by the Petitioner beginning from the invocation of arbitration till the disposal of the present Petition would be taken into for calculating limitation, if and when the Petitioner decides to invoke other remedies in accordance with the law.

14. The Petition is disposed of in the aforesaid terms.

15. Pending application(s), if any, are also disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2025

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