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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 105/2025 & I.A. 26111/2025**
MC CONSTRUCTION CO.Petitioner

Through:
versus

GOVT. OF NCT OF DELHIRespondent

Through: Mr. Vishal, Mr. Tushar Sannu,
Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **17.10.2025**

1. This is a petition filed under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996 (“**1996 Act**”) seeking substitution of the present Sole Arbitrator.
2. The facts are that the petitioner entered into a Contract Agreement bearing No. 04/EE/PWD/M-112/2023-24 dated 10.05.2023 with the respondent for the work of “Strengthening/Reconstruction of service road of Rohtak road (NH-10) from Metro pillar no. 410 to 570 Mundka Industrial area both sides (Actual length of one side 5.00 Km) under PWD, Maintenance Division West Road-2, New Delhi during 2022-23”).
3. The said Agreement contained an arbitration clause being Clause No. 25 of General Conditions of Contract, which reads as under:

“Clause 25: Settlement of Disputes by Conciliation and Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications,



designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used in 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 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.

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25.2 Arbitration: *If the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period, either party may promptly give notice in the proforma prescribed in Appendix XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable), hereinafter referred to as the Arbitrator Appointing Authority as indicated in Schedule F, for appointment of Arbitrator.*

However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above.

In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment of Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration

(a) Number of Arbitrators: If the contract amount is less than



Rs.100 crore, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs.100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.

(b) Qualification of Arbitrators: It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public works engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of India).

The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator.

The age of Arbitrator at the time of appointment shall not exceed 70 years. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) Parties to select Arbitrator: Based on the criteria specified above, a list of empanelled Arbitrators has been prepared in CPWD, and the parties shall have option to select an Arbitrator from the list sent to them.

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25.5 Applicable Law: *The provisions of the Arbitration and Conciliation Act, 1996 (Act 26 of 1996) and any further statutory modification or re-enactment thereof shall be applicable. Further, the fast-track procedure for arbitration contained in Section 298 of the said Act shall apply.”*

4. Since disputes arose between the parties, the petitioner approached the



Chief Engineer for appointment of the Arbitrator as per the said Clause No. 25 *vide* its letter dated 15.02.2024. Subsequently, the petitioner filed a petition under Section 11 of the 1996 Act, which was allowed *vide* Order dated 07.08.2024 and Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi ("**DIAC**"), was directed to appoint an Arbitrator.

5. The petitioner filed its Statement of Claims before the DIAC. The DIAC appointed Sh. R.P. Gupta as the Sole Arbitrator and requested the Sole Arbitrator to furnish the declaration in terms of Section 12 of the 1996 Act. However, despite the reminders, the Sole Arbitrator has failed to furnish declaration under Section 12 of the 1996 Act.
6. Hence, the present petition.
7. It is stated that the Sole Arbitrator has not entered reference and has also not filed the declaration under Section 12 of the 1996 Act.
8. For the said reasons, issue notice to the respondent.
9. Mr. Vishal, learned counsel appears for Mr. Sannu, learned counsel for the respondent and has no objection to the present petition being allowed.
10. I am satisfied that there is an arbitration agreement and disputes between the parties which need to be adjudicated through arbitral mechanism.
11. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. R.P. Gupta is substituted and Ms. Barkha Gupta (District Judge) (Retd.) (Mob. No. 9910384753) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - 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.
12. The parties have already deposited some amounts towards arbitral fee with the DIAC. They shall be granted credit for the same by the DIAC.
13. The present petition is disposed of with pending applications, if any.

JASMEET SINGH, J

OCTOBER 17, 2025/sp