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

+ **ARB.P. 1800/2024**

HIMANSHU SAINI

.....Petitioner

Through: Mr. Ankur Mahindro, Mr. Mohit
Dagar, Mr. Raghav Kalra, Advs.

Versus

GOVERNMENT OF NCT OF DELHI

.....Respondent

Through: Ms. Avsi Malik, Mr. Abhinav
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

24.03.2025

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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. Brief facts are that the petitioner and the respondent executed a Work Order dated 28.07.2021 for the work of repair and renovation of Arya Bhatt Institute of Technologies at GT Karnal Road, Delhi for an amount of about Rs. 1.99 crores. The petitioner completed the work on 15.12.2021.
3. Since there were disputes with regard to the payment, the petitioner issued notice on 15.01.2024 as per clause 10 of CPWD Form 11A.
4. In a meeting convened on 19.02.2024, the Chief Engineer directed the Executive Engineer to release the final bill of the Petitioner on top



priority.

5. Despite the said direction, the amount has not been released. Hence, the present petition was filed.
6. Even though the reply is stated to have been filed, the same is not on record. Ms. Malik, learned counsel for the respondent has handed over a copy of the same.
7. The stand of the respondent is that there is no arbitration clause between the parties and hence, the present petition is not maintainable. The CPWD Form 11A has not been issued by the respondent and hence, reference to the same is misconceived and in fact, CPWD Form 11A has not been issued to any of the contractors.
8. I have heard learned counsel for the parties.
9. In the present case, admittedly, the petitioner has performed the work in terms of the work order dated 28.07.2021. The work order is reproduced as under:-

“C.P.W.D - 11A
Original/Duplicate/

GOVT. OF NATIONAL CAPITAL TERRITORY OF
DELHI
PUBLIC WORKS DEPARTMENT
WORK ORDER

State Delhi

Branch B & R

Work Order No. 01/EE/NBD (M-322)/PWD dg. 2021-22

Division: NBD (M-322)

Sub-Division: NBSD-13

Date: 28.07.2021

Date of Start: 28.07.2021

Date of Completion: 27.08.2021



Time allowed: 1 month

Order for work described below given to Himanshu Saini, 9/89, Sector 3, Rajender Nagar, Sahibabad, Ghaziabad (UP)- 201005, Contractor to be executed as per conditions attached and at the rates in the schedule:-

Schedule of Work

Description of Work Rate Per Remarks

Estimated Cost Rs. 2,08,59,061

Enhancement @ 4.45% below Rs. 9,28,228

Work Order Amount Rs. 1,99,30,833 (Rupees One Crore Ninety Nine Lacs Thirty Eight Thousand Eight Hundred Thirty Three Only)

Name of Work: Repair & Renovation of Arya Bhatt Institute of Technology at G.T. Karnal Road, Delhi (Civil Work)

AS PER SCHEDULE OF QUANTITIES ATTACHED

Terms & Conditions:

- 1. The work shall be carried out generally as per CPWD specifications and as per directions of Engineer-in-Charge.*
- 2. The work is of emergent nature and will have to be completed upto 05.09.2021 so as to facilitate the University's Upcoming Session to start in September 2021. The Contractor may have to work day and night so as to ensure timely completion of work and accordingly shall plan and ensure availability of all resources to complete the work timely.*
- 3. All due recoveries shall be made from running/final account bills.*
- 4. Security Deposit @ 2.5% of the gross amount of work done shall be recovered from the running/final bills, which shall be refunded after successful completion of the Maintenance period of one year i.e. The defect liability*



period.

5. In addition to normal security deposit, additional security deposit @10% of the cost of water proofing items shall be recovered and retained up to 10 years from the recorded date of completion of work.

6. To supervise the work, technical persons i.e. Two graduate

engineers/one graduate engineer and one Diploma Engineer with 10 year experience in the relevant field shall be deployed. In case of non-deployment, a recovery @ Rs. 15,000/- per Engineer Per Month shall be deducted and recovered from the contractor.

7. Water and electricity required for the work shall be arranged by the contractor.

8. No T & P shall be issued by the department.

9. All material to be used shall be as per the list of the "Approved Material" attached as per "Annexure-A." Material shall be got tested from the laboratory approved by the engineer-in-charge. If the material confirms to the specification, than only the testing charges shall be borne by the department. Cost of sample, picking and carriage to the laboratory shall be borne by the contractor.

10. The serviceable dismantled material, if any, shall be deposited with the department at JE's store, by the contractor his own cost.

11. All safety measure shall be ensured by the contractor during the execution of work at his own cost. The Contractor shall vouch-safe the department of any all liabilities of his men and material including the third party, due to any accident/untoward incident during execution of the work.

12. Extra/Substituted deviation items, if any, of inescapable nature necessary to complete a work in its logical manner



shall be executed and shall be governed as per condition "Annexure-B."

13. The contractor shall ensure to observe all Covid-19 pandemic related protocol, issued by the Government from time to time, during execution of work for which nothing extra shall be payable.

14. The engineer-in-charge reserves the right to foreclose determine the contract at any time in full or partial without assigning any reasons thereof. The decisions of the engineer-in-charge in this regard shall be final at binding on the contractor.

*Executive Engineer
North Building Division (M-322)
PWD Kashmere Gate, Delhi-06"*

- 10.** The top right-hand corner of the Work Order shows reference to CPWD Form 11A. The operative portion of the CPWD Form 11A reads as under:-

"C.P.W.D. 11A

GOVERNMENT OF INDIA

CENTRAL PUBLIC WORKS DEPARTMENT

State

Division

Sub-Division

WORK ORDER

*MEMORANDUM OF AGREEMENT made on day
ofbetween sonof
..... here in after called "the contractor"(which
expression where the context so admits shallinclude his*



*heirs, executors, administrators and assigns) of the one part
AND the President of India acting through the
SubDivisional/Divisional officer hereinafter called "the
President"(which expression where the context so admits
shall include his successors and assigns) of the other part.*

WHERE IT IS AGREED AS FOLLOWS:

1

2.

. . . .

*10. Except where otherwise provided in the Contract all
question and disputes relating to the meaning of the
specification, designs, drawings and instructions herein-
before mentioned and as to 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, relating to the contract designs, drawings specification,
estimation, 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 completion or abandonment thereof shall be
referred to the sole arbitration of the Chief Engineer,
Central Public Works Departments, and if the Chief
Engineer is unable or unwilling to act, to the role of a
arbitration or some other persons appointed by the Chief
Engineer, willing to act as such arbitrator. It will be no
objection to any such appointment that the arbitrator so*



appointed is as Govt. servant, that he had to deal with the matters to which this Agreement relates and that in the course of his duties as such/Government servant he had expressed views on all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to this contract.”

- 11.** The CPWD Manual also talks about CPWD Form 11A and the relevant portion is extracted below:-

“CPWD WORKS MANUAL 2022

Part I

. . . .

1.1

(5) Work Order (CPWD 11A): This form is normally used for works which are to be awarded without call of tender. In Form 11A, the contractor is bound in respect of the quantity of work and the time in which it is to be completed.”

- 12.** Lastly and most importantly, the petitioner in paragraph 3 of the petition has also averred as follows:-

“3. The Parties executed a Work Order on 28.07.2021 for the work of Repair & Renovation of Arya Bhatt Institute of Technologies at G.T. Karnal Road, Delhi (Civil Work) (hereinafter referred to as 'the work') for a total amount of INR 1,99,30,833 (Rupees One Crore Ninety Nine Lacs Thirty Thousand Eight Hundred Thirty Three only) which



was governed by CPWD Form No. 11A which is a standard form for work orders. The same is apparent from the reference to CPWD 11A in the Work Order itself. The Work Order contained the specific/special conditions to the work whereas the Form 11A contained the general conditions binding the parties. Moreover, at the time of execution of the Work Order, it was agreed between the parties that the Work Order will be governed as per the Standard format CPWD 11A. The copy of the CPWD 11A standard form [which is a standard format for work to be awarded without call of tender as per CPWD Works Manual, 2022] was attached to the executed Work Order and was exchanged between the parties alongwith the executed Work Order. Clause 10 of the CPWD 11A provides for resolution of disputes through Arbitration.....”

13. In view of the aforesaid facts, there is a categorical reference to CPWD Form 11A in the Work Order dated 28.07.2021 executed between the petitioner and the respondent. Further, the petitioner has categorically stated that copy of CPWD Form 11A was attached with the Work Order and was exchanged between the parties.
14. On perusing the notice invoking arbitration, the petitioner has categorically requested for appointment of arbitrator in terms of clause 10 of CPWD Form 11A.
15. Learned counsel for the petitioner has rightly relied upon paragraph 18 of ***Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519*** to urge that the general reference of a consensual standard form is sufficient for



incorporation of an arbitration clause. Para 18 of the said judgment reads as under:-

“18. We are of the opinion that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. In M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] this Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. In other words, general reference to a standard form of contract of one party will be enough for incorporation of arbitration clause. A perusal of the passage from Russell on Arbitration, 24th Edn. (2015) would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] . We are in agreement with the judgment in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] with a modification that a general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause.”

Emphasis added



16. For the said reasons, *prima facie*, I am satisfied that the Work Order contained reference to CPWD Form 11A which contained an arbitration clause. The same has duly been mentioned in the notice invoking arbitration. The petitioner in paragraph 3 has also stated that the copy of CPWD Form 11A was annexed with the Work Order.
17. The Referral Court at this stage is only required to see the existence of an arbitration clause which, in my view, for the aforesaid reasons, is duly existing.
18. Since the disputes between the parties are pending, the petition is allowed and the following directions are issued:-
- i) Ms. Kaadambari Singh, Sr. Advocate (Mob. No. 9811111892) 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 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.

19. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 24, 2025 / (MS)

Click here to check corrigendum, if any