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

+ **ARB.P. 1803/2024**

M/S GRIM TECH PROJECTS (I) PVT. LTD.Petitioner

Through: Mr. Anal Pawar, Mr Bipin Kumar
Prabhat, Ms. Kislaya Prabhat, Advs.

versus

INDURE PRIVATE LIMITEDRespondent

Through: Mr. Prashant Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **29.10.2025**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking appointment of an Arbitrator for adjudication of disputed between the parties.
2. The facts are that the petitioner was awarded work for "Job No. I-3066 – Bhavnagar Energy Company Ltd. 2x250 MW Lignite Based TPP at Padva, Bhavnagar – Lignite & Limestone Handling Plant – Pilling Work" was *vide* Work Order dated 03.05.2012 being W.O. No. I-3066/BECL-B/Grim-Tech/01.
3. The said Work Order contained the arbitration clause being Clause Nos. 13.5 and 14 of General Conditions of Contract ("**GCC**"), which read as under:-

"13.5 SETTLEMENT OF DISPUTES

Any dispute(s) or differences arising out of or in connection with the contract shall, to the extent possible, be settled amicably between the parties.



All unsettled dispute(s) or difference(s) arising out of or in connection with the contract shall be decided by the Engineer whose decision shall be final and binding on the parties.

Prior to the initiation of any/or arbitration proceedings permitted by this contract to resolve disputes between them, in the event a dispute arises between the Employer and the contractor regarding the application or interpretation of this contract (a "Dispute"), the Employer's Project Incharge/Engineer and the contractor's representative shall use their best efforts in good faith to reach a reasonable and equitable resolution of the matter. If the Employer's Project Incharge/Engineer and the contractor's representative are unable to resolve the matter within 30 days, either party by written notice may refer the matter for resolution by good faith negotiation between their respective senior officers with decision making power and who shall not have had substantive involvement in the matters involved in the dispute, unless the parties otherwise agree.

14.00 ARBITRATION:

Where any dispute is not resolved as provided for in the clause 13.5 then the following provisions shall apply:

a) The dispute shall be referred to arbitration at the request of either party upon written notice to that effect to the other party (a "Notice of Reference") in accordance with the Arbitration Rules of Indian Arbitration and Conciliation



Act, 1996 in force at the date of the agreement. Where the rules do not deal with any issue arising in connection with the conduct and/or procedure of the arbitration such issue shall be resolved in accordance with the law of the place in which the arbitration is held and GCC clause 14 shall be construed accordingly.

b) Performance of the contract shall continue during any arbitration proceedings pursuant to above clause unless the employer shall order the suspension thereof pursuant to GCC clause 13.

c) Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be on the direction of the Sole Arbitrator so appointed who may determine the amount thereof or direct the same as between party & parties by whom and in what manner the same is to be borne and paid .

d) The place of arbitration shall be Delhi and the language of the arbitration shall be English.

e) The parties agree that any arbitration award shall be final and binding upon the parties (to the fullest extent permitted by applicable law) and the parties waive their right to any form of appeal or other similar recourse to a court or law.

f) The arbitration will take place before a Sole arbitrator who shall be nominated by Mr. N.P. Gupta, Chairman of Desein Private Limited, Desein House, Greater Kailash-11,



New Delhi 110048.”

4. In view of the said Work Order, petitioner started with the construction of the project and raised various RA Bill-1. However, bills of payments were not being released. Against the bills the respondent has only made part payments and has even failed to release the retention amount.
5. Consequently, the petitioner filed a recovery suit, which was dismissed as withdrawn with liberty to file afresh before the appropriate forum.
6. Thereafter, *vide* notice dated 31.05.2023, the petitioner invoked arbitration. However, in event of respondent's failure to give consent within 30 days, the petitioner filed a petition under Section 11 of the 1996 Act being Arbitration Petition No. 698/2023, for appointment of an Arbitrator. This Court *vide* order dated 12.08.2024 permitted the petitioner to withdraw the said Arbitration Petition with liberty to reapproach the Court after following the pre-arbitral protocol provided in Clauses No. 13.5 and 14 of GCC.
7. Subsequently, the petitioner, following the pre-arbitral protocol envisaged in Clauses No. 13.5 and 14 of GCC, issued a notice dated 17.08.2024 to the Project InCharge/Engineer of the respondent. However, the said notice was not replied to by the respondent. Thereafter, the petitioner issued another notice dated 18.09.2024, which again was not responded to by the respondent.
8. Hence, the petitioner has filed the present petition.
9. Mr. Mehta, learned counsel appears for the respondent and has handed over a reply in the Court today, which is taken on record.
10. He states that primarily all his objections including objection pertaining to claims being barred by limitation and Work Order not being non-



stamped are issues which shall be decided in the arbitral proceedings by the learned Arbitrator. However, he presses only one issue that Clause No. 14 of GCC has not been complied with as no notice has been issued by the petitioner before filing of the present petition, which was a pre-condition under Clause No. 14 of GCC.

11. On the said objection, I am of the view that Clause Nos. 13.5 and 14 of GCC have to be read harmoniously. A combined reading of the said clauses shows that before the parties engage in arbitration, an attempt must be made to settle the disputes, if possible.
12. In terms thereof of the said clauses, the petitioner duly issued two notices dated 17.08.2024 and 18.09.2024, which were not even adverted to by the respondent. The perusal of the said notices clearly shows that the petitioner quantified its claims, highlighted the alleged shortfalls on behalf of the respondent and duly put the respondent to notice regarding the subject matter of the dispute. Additionally, the petitioner had already issued a notice dated 31.05.2023 in terms of Clause No. 14 of GCC before filling the Arbitration Petition No. 698/2023. It is quite clear that the petitioner has asserted to the respondent the disputes between the parties, its claims and its intention to resolve through the arbitral mechanism.
13. At this stage it is relevant to examine the objective and purpose behind a notice under Section 21 of the 1996 Act. Recently, the Hon'ble Supreme Court in **Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd., 2025 SCC OnLine SC 806** explained the purpose of the notice under Section 21 of the 1996 as under:-

“10. This Court has expounded the purpose and object



underlying the notice referenced in Section 21 in several judgments, which can be stated as follows:

10.1 First, the notice is necessary to determine whether claims are within the period of limitation or are time-barred. Section 43(1) of the ACA stipulates that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Further, Section 43(2) provides that for the purpose of the Limitation Act, an arbitration shall be deemed to have commenced on the date referred to in Section 21. Hence, the date of receipt of the Section 21 notice is used to determine whether a dispute has been raised within the limitation period as specified in the Schedule to the Limitation Act, as held by this Court in Milkfood Ltd. v. GMC Ice Cream (P) Ltd.⁵ and State of Goa v. Praveen Enterprises.

10.2 Second, the date of receipt of notice is also relevant to determine the applicable law to the arbitral proceedings. This can be understood in two senses : (i) When the arbitral proceedings are governed by a law that is different from the proper law of the contract, the governing law applies only after the arbitral proceedings have commenced, as held in Milkfood Ltd (supra). And, (ii) Section 85(2)(a) of the ACA provides that the Arbitration Act, 1940 and Foreign Awards (Recognition and Enforcement) Act, 1961 will apply to arbitral proceedings that commenced prior to the ACA coming into force, unless otherwise agreed by the parties.



Hence, the date of invoking arbitration is necessary to determine which arbitration law applies to the proceedings as per the decisions in Milkfood Ltd (supra) and Geo-Miller & Co (P) Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd. Similarly, the applicability of amendments to the ACA to arbitral proceedings is determined by reference to the date on which such proceedings commenced as per Section 21.

10.3 Third, an application before the High Court or this Court under Section 11(6) of the ACA for appointment of arbitrator can be filed only after the respondent has failed to act as per the appointment procedure in the arbitration agreement. Hence, invocation of arbitration as provided in Section 21, and the subsequent failure of the respondent to appoint its arbitrator or agree to the appointment of a sole arbitrator as provided in Sections 11(4) and 11(5), are necessary for invoking the court's jurisdiction under Section 11. This is as per the decision of this Court in BSNL v. Nortel Networks (India) (P) Ltd. Further, the limitation period within which the Section 11 application must be filed is also calculated with reference to the date on which the appointment procedure under the arbitration agreement falls.”

(Emphasis added)

14. Further, a Coordinate Bench of this Court in **Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd., 2017 SCC OnLine Del** has laid



that the one of the purpose of a notice under Section 21 of the 1996 Act is to crystallise the claims of the claimant, so that the other party becomes aware of the same and has an opportunity to respond to them. The relevant paragraphs of the said judgement are extracted below:-

“24. Section 21 of the Act reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and



so on.”

(Emphasis added)

15. From the judgments discussed above, it is clear that a notice under Section 21 of the 1996 Act is not mere a procedural requirement but serves a substantial substantive role in commencement of an arbitral proceeding. The intent of such notice is to ensure that the other party is duly informed of the disputes that have arisen between it and the claimant and the claimant’s intention to proceed with arbitration to adjudicate such disputes.
16. Additionally, I have already taken a view in ***The Prasara Bharati v. Visual Technologies India Pvt. Ltd., ARB.P. 558/2023, order dated 18.03.2024***, that there is no fixed format of the notice invoking arbitration. The relevant paragraphs of the said order is extracted below:-

“9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-

- a. The dispute between the parties.*
- b. The demand to resolve the disputes as per the envisaged arbitration clause.*



c. In case, the disputes are not resolved the intention to resort to the arbitral process.

d. The notice must be sent to the respondent.”

(Emphasis added)

17. In the present case, the notices dated 17.08.2024, 18.09.2024 and the earlier notice dated 31.05.2023 clearly show that the petitioner has duly complied with the requirement of putting the respondent to notice regarding the disputes between them, its claims and its intention to invoke arbitration. Hence, the purpose of a notice under Section 21 of the 1996 Act has been fulfilled. However, the respondent failure to not respond to any of the notices cannot mean that the petitioner is expected to issue notice after notice. The purpose of Clause No. 14 of GCC as well as of Section 21 of the 1996 Act is to ensure that the respondent knows of the existence of the disputes that have arisen and claimant's intention to invoke the arbitral procedure and not to trouble the claimant by making it go round and round in technical formalities. Hence, I am of the view that the purpose of a notice under Section 21 of the 1996 Act has duly been complied with in the present matter. The notices dated 17.08.2024, 18.09.2024 and 31.05.2023 meets the aforesaid test.
18. Further, in terms of Clause No. 14(f) of GCC, the arbitration is to take place before the Arbitrator who would be appointed by Mr. N.P. Gupta, Chairman of Desein Private Limited, Desein House, Greater Kailash-II, New Delhi 110048.
19. Mr. Mehta, learned counsel very fairly states that the appointment of the Arbitrator if made by the Chairman of Desein Private Limited



would be hit by Seventh Schedule of the 1996 Act. Additionally, such appointment would be contrary to the principles laid by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760***, wherein it was observed that a person who has an interest in the outcome of the dispute must not have the power to appoint Arbitrator(s), as the same leads to apprehension of bias and prejudice.

20. Further, the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641*** pertaining to unilateral appointment of Arbitrator(s) observed as under:-

“170. In view of the above discussion, we conclude that:

170.1. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;

170.2. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;

170.3. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

170.4. In the appointment of a three-member panel,



mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] is unequal and prejudiced in favour of the Railways;

170.5. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

170.6. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and

170.7. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.”

(Emphasis added)

21. In view of the aforesaid law, I am of the view that in present case a notice under Clause No. 14(a) of GCC would be merely an empty formality as under Clause No. 14(f) of GCC, Desein Private Limited cannot appoint an Arbitrator to adjudicate disputes arising out of its



own cause.

22. Hence, I am satisfied that there exist a valid arbitration clause and dispute between the parties which need to be adjudicated through the arbitral mechanism.
23. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Manu Beri (Advocate) (Mob. No. 9810244108) 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 1996 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.



24. The respondent will be entitled to urge before the learned Arbitrator the issues pertaining to claims being barred by limitation and the Work Order not being non-stamped may be decided as a preliminary issues.
25. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 29, 2025 / (MS)