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

+ **ARB.P. 1849/2025 & I.A. 27554/2025**

M/S. K.S. JAIN BUILDERS

.....Petitioner

Through: Ms. Minakshi Jyoti, Mr. Anmol Jain
and Ms. Shakshi Raj, Advs.

versus

INDIAN RAILWAYS WELFARE ORGANISATIONRespondent

Through: Mr. Sulaiman Mohd. Khan, Ms. Taiba
Khan, Mr. Gopeshwar Singh Chandel,
Mr. Abdul Bari Khan and Ms. Aditi
Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **07.11.2025**

I.A. 27553/2025 (Exemption)

Allowed, subject to all just exceptions.

ARB.P. 1849/2025

1. The present Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Parties under the Agreement dated 30.08.2016 for Construction of Single-storied Row Houses on Turnkey basis including transfer of land at Moradabad (U.P.).

2. Learned Counsel appearing for the Respondent vehemently opposes the Petition on the ground that once the Respondents have given no-claim



certificate to the Petitioner, no dispute subsists for referring to arbitration. He draws attention of this Court to Clauses 7.1 and 7.2 of the Contract in support of his submission. This Court is not expressing any opinion on this issue as it will be for the Arbitrator to decide.

3. Clauses 9.2 and 9.3 of the Agreement dated 30.08.2016, which is an arbitration clause, reads as under:

“9.2 Arbitration

9.2.1 In the event of any dispute or difference between the parties hereto as the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account to which the parties may claim to be entitled to, then the disputed matters may be referred to arbitration, as per procedure laid down below:

i. The demand for arbitration shall specify the matters which are in question, dispute(s) or difference(s) in respect of which the demand has been made, shall be referred to arbitration and other matters shall not be included in the reference.

ii. It is a term of the Contract that no person other than a person nominated by Employer shall act as Arbitrator and if for any reason that is not possible, the matter is not to referred to arbitration at all. In case where the Contractor has signed the final bill with "No Claim Certificate", the matter will not be referred to arbitration and in such cases, it will be a term of the Contractor that there is no arbitration clause at all.

9.2.2 In cases where the total value of all claims in question added together does not exceed Rs. 50 lakhs (Rupees Ten Lacs only) the Arbitral Tribunal consist of



Sole/Arbitrator who shall be either the Managing Director or any officer of IRWO, nominated by the Managing Director on his behalf. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by IRWO.

9.2.3 In case not covered by the above clause, the Arbitral Tribunal shall consist of a panel of three serving or retired officers of Railway as the Arbitrators. For this purpose, IRWO will send a panel of more than three names of officers to the Contractor who will be asked to select / opt and suggest to Managing Director of IRWO at least two names out of the panel for appointment as Contractor's nominee. Managing Director shall appoint at least one out of them as Contractor's nominee and will, also simultaneously appoint the balance number of Arbitrators either from the panel or from outside the panel and the two appointed Arbitrator shall appoint the third Arbitrator who shall act as the presiding Arbitrator.

9.2.4 If one or more Arbitrator(s) appointed as above refuse(s) to act as arbitrator(s), withdraw from his office as Arbitrator or vacates his/their office or is/are unable or unwilling to perform his/their function as Arbitrator(s) for any reasons, whatsoever or die(s), or in the opinion of Managing Director fail(s) to act without undue delay, the Managing Director shall appoint new Arbitrator / Arbitrator(s) to act in his/their place in same manner in which the earlier Arbitrator(s) has been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator(s).

9.2.5 The demand for Arbitration is subject to



Arbitration and Conciliation Act, 1996 and the rules there under and any statutory modification thereof shall apply to the Arbitration proceedings under this clause.

9.3.1 The language of proceedings, documents or communication shall be in English and the Awards shall be made in English in writing. The Conciliator/Arbitrator shall give the award which shall state item wise the sum awarded and the reasons upon which it is based. The analysis and the reasons shall be detailed enough so that award could be inferred there from.

9.3.2 The Conciliator/Arbitral Tribunal shall record day to day proceedings. Those proceedings shall normally be conducted on the basis of documents and written statement.

9.3.3 The conciliation/arbitration proceedings shall be held at a place decided by Conciliator/Arbitrator.

9.3.4 The fees and other charges of the Conciliator/Arbitrator shall be as per the scale fixed by the IRWO from time to time and shall be shared between the IRWO and the Contractor.

9.3.5 The minimum qualification of Conciliator/Arbitrator shall be graduate in Engineering. He may be a working OR a retired officer with a minimum of 20 years in Group 'A' in Engineering Services of railways or equivalent in railway PSUs. He should be clear from the vigilance angle and should be a person with reputation of high technical ability and integrity. Also he would not have associated with the contract to which the disputes pertain.



9.3.6 It is a term of this contract that the Contractor shall not approach any Court of law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences in accordance with the provisions of clause.

9.3.7 Obligations of IRWO and Contractor shall not be altered by reasons of Conciliation/Arbitration being conducted during the progress of works. Neither party shall be entitled to suspend the work on account of conciliation/arbitration and payments to the contractor shall continue to be made in terms of contract.

9.3.8 The award of Conciliator /Sole Arbitrator/Arbitral Tribunal unless challenged in the Court of Law shall be binding on all parties.”

4. The Respondents have their office complex in Delhi and therefore, this Court will have the jurisdiction to entertain the present petition. The arbitration clause specifies that the Arbitrator must be a qualified engineer.

5. In view of the fact that disputes have arisen between the parties and the Agreement contains an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

6. Accordingly, Mr. Arvind Kumar Arora, Former DG MES CPWD (Mob. No. 8130588572), is appointed as the Arbitrator to adjudicate upon the disputes between the Parties.

7. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

8. The learned Arbitrator is also requested to file the requisite disclosure



under Section 12(2) of the 1996 Act within a week of entering on reference.

9. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

10. It is made clear that this Court has not expressed any opinion on the merits of the case and this Order is confined only to the issue of appointment of Arbitrator. It is open for the Respondents to raise objections and counter-claims before the Arbitrator for the resolution of disputes.

11. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 7, 2025

S. Zakir