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

+ **ARB.P. 1888/2025**

M/S KMV PROJECTS LTD

.....Petitioner

Through: Mr. Avinash Trivedi, Adv. Ms. Ritika Trivedi, Adv. Mr. Rahul Aggarwal, Adv. Mr. Anurag Kaushik, Adv. Mr. Rhythem Nagpal, Adv. Mr. Jatin Arora, Adv. Mr. Rishank Gola, Adv.
versus

M/S HSCC INDIA LTD & ANR.

.....Respondents

Through: Mr. Harshit Agarwal and Mr. Aasheesh Gupta Advocates for R1
Mr. Vikram Jetly, CGSC with Mr. Kushagra Sachdeva, Adv. for R2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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04.12.2025

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. The brief facts are that the petitioner participated in the tender for the execution of the work of "Construction of Residential Complex & OPD Block at All India Institute of Medical Sciences, Mangalgi, Guntur (AP) including internal & external Electrical, HVAC, PHE, firefighting, external development, etc. and their Maintenance during Defect Liability Period" and was declared as the successful participant.
3. Subsequently, the respondent No. 1 issued an Acceptance Letter dated 30.08.2017 in favour of the petitioner, pursuant to which an Agreement



dated 29.09.2017 was entered into between the petitioner and respondent No. 1. The respondent No. 1 is the executing agency on behest of respondent No. 2 for the execution of the present work.

4. The General Conditions of the Contract of the said Agreement contains an arbitration clause being Clause No. 25, which is extracted below:-

SETTLEMENT OF DISPUTES & ARBITRATION

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the 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 of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions 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:

- (i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the authority indicating in schedule 'F' (Reviewing Authority) in writing for written instruction or decision. Thereupon, the Reviewing

Authority shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Reviewing Authority fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Reviewing Authority, the contractor may, within 15 days of the receipt of the Reviewing Authority's decision, appeal to the authority as indicated in schedule 'F' (Appealing Authority) who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Appealing Authority shall give his decision within 30 days of receipt of contractor's appeal.



If the contractor is dissatisfied with the decision of the Appealing Authority, the contractor may within 30 days from the receipt of the Appealing Authority's decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Appealing Authority. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'.

If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Client for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which, the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

- (ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the *Designated Authority of the Executing Agency*. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Appealing Authority of the appeal.

It is also a term of this contract that no person, other than a person appointed by (*Designated Authority of the Executing Agency*), as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived



and absolutely barred and the *Executing Agency* shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) / The Jammu and Kashmir Arbitration and Conciliation Act, 1997 (35 of 1997) (as the case may be) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

5. Since disputes arose between the parties, the petitioner invoked arbitration *vide* legal notice dated 13.08.2025. The respondent No. 1 *vide* letter dated 12.09.2025 replied to the said notice and shared a panel of Arbitrators in CPWD and asked the petitioner to select 5 names based on which a Sole Arbitrator on mutual consent be appointed.
6. The same was not acceptable to the petitioner and hence, filed the present petition.



7. The conduct of the respondent is contrary to the judgment of ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)***, (2025) 4 SCC 641, wherein Hon'ble Supreme Court categorically held that Public Sector Undertakings (PSUs) cannot mandate that the other party appoint their nominee Arbitrator from the panel curated by PSUs, as the same is against the principles of equal participation as inscribed in the 1996 Act. The relevant paragraphs from the said judgement read as under:-

“130. In comparison, a three-member Arbitral Tribunal usually allows each party to nominate one arbitrator of their choice, with the third arbitrator being appointed either by the two party-appointed arbitrators or by agreement of parties. [Id, p. 211.] The fact that both parties nominate their respective arbitrators gives them “a sense of investment in the Arbitral Tribunal” [Id, p. 211.] . A three-member Arbitral Tribunal also enhances the quality of the adjudicative deliberations and ensures compliance with due process.

131. In a three-member tribunal, each of the parties seeks to appoint a co-arbitrator. However, the third arbitrator is usually appointed by a process which allows equal participation of both parties in the appointment process. The equal participation of parties enables the appointment of an independent and impartial third arbitrator. Hence, any perceived tilt of an arbitrator in favour of the party which nominated that the arbitrator is offset by the appointment of the third arbitrator in the course of a deliberative process involving both the



arbitrators or as envisaged in the agreement between the parties. Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760] rightly observed that whatever advantage a party may derive by nominating an arbitrator of its choice would get counterbalanced by equal power with the other party. [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760, para 16] This counterbalancing will ideally apply only in situations where the arbitrators are appointed by the parties in the exercise of their genuine party autonomy. TRF [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] and Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760] have been relied upon by this Court on numerous occasions, including in Glock Asia-Pacific Ltd. v. Union of India [Glock Asia-Pacific Ltd. v. Union of India, (2023) 8 SCC 226, para 20 : (2023) 4 SCC (Civ) 36] and Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. [Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd., (2024) 4 SCC 341, para 85 : (2024) 2 SCC (Civ) 763]

132. In Voestalpine [Voestalpine Schienen GmbH v. DMRC Ltd., (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] and CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , one of the parties curated a panel of arbitrators and mandated the other party to select their arbitrator from the panel. Since the curation of the list is exclusively undertaken by



one party, the other party is effectively excluded from the process of curating the panel from which exclusively, the appointment of an arbitrator is to be made. The other party has to mandatorily select its arbitrator from a curated panel, restricting their freedom to appoint an arbitrator of their choice. This is against the principle of equal treatment contained under Section 18. In this situation, there is no effective counterbalance because both parties do not participate equally in the process of appointing arbitrators. The party curating the panel can restrict the choice of the party only to a person who is on the panel selected by the other party and to no other person.

133. *Many PSUs are regularly involved in arbitration disputes and constantly need the services of arbitrators. Such institutions often maintain a pool of potential arbitrators with the sole object of having a ready pool of qualified professionals who have committed their time and consented to act as arbitrators for fixed fees. The Arbitration Act does not prohibit parties to an arbitration agreement from maintaining a curated panel of potential arbitrators. However, the problem arises when the PSUs make it mandatory for other parties to select their nominees from the curated panel of arbitrators. When a PSU exercises its discretion to curate a panel, the very factor that the PSU is choosing only a certain number of persons as potential arbitrators and not others will raise a reasonable doubt in the mind of a fair-minded person. The PSUs may conceivably have*



nominated a person on the panel of potential arbitrators because they have a certain predisposition in favour of the former. This doubt is reinforced when the other party is given no choice but to select its arbitrator from the curated panel.

134. *In CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , the three-member tribunal was sought to be constituted in the following manner : (i) the Railways would suggest at least four names of retired railway officers; (ii) the contractor would select two names out of the panel for appointment as their arbitrator; (iii) The General Manager (of the Railways) would thereafter choose at least one person out of the two to be appointed as the contractor's arbitrator; and (iv) The General Manager would proceed to appoint the balance arbitrators from the panel or outside the panel and also indicate the presiding arbitrator.*

135. *Such an arbitrator-appointment clause is likely to give rise to justifiable doubts as to the independence and impartiality of arbitrators for two reasons : (i) the contractor is restricted to choosing its arbitrator from the panel of four arbitrators nominated by the party who is a disputant; and (ii) the contractor's choice is further constrained because it is made subject to the decision of the General Manager who will choose one among the two persons suggested by the party. Since the contractor has to select its arbitrator from a curated panel, the arbitration clause does not allow the contractor equal*



participation in the appointment of their arbitrator. Moreover, the clause allows the General Manager to appoint the balance arbitrators from either the panel or outside the panel. Thus, the process of appointing the arbitrators is unequal because the General Manager can go beyond the panel of four potential arbitrators, while the contractor is bound by the names enlisted in the panel.

136. In a three-member tribunal, the independence and impartiality of a third or presiding arbitrator are prerequisites to the integrity of the arbitral proceedings. In CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , the arbitration clause allowed the General Manager to unilaterally nominate the Presiding Officer out of the panel of three arbitrators. The clause does not countenance any participation from the contractor in the process of appointing or nominating the Presiding Officer. Thus, the process of appointing and nominating the Presiding Officer is unequal and prejudiced in favour of the Railways. The fact that the General Manager is nominating the Presiding Officer gives rise to a reasonable doubt about the independence and impartiality of the entire arbitration proceedings.

137. Given the above discussion, it needs reiteration that 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. The PSUs can give a choice to the other party to select its arbitrators from the curated list provided the other party expressly waives the applicability of the nemo judex rule.”

(Emphasis added)

8. The parties agree that a person with legal background may be appointed as an arbitrator.
9. I am satisfied that there is a valid arbitration clause and disputes between the parties which need to be adjudicated through arbitral mechanism.
10. Consequently, the petition is allowed and the following directions are issued:-
 - i) Mr. Justice Rajiv Shaktiher (Retd. Chief Justice of High Court of Himachal Pradesh) (Mob. No. 9717495004) 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 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.
11. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

DECEMBER 4, 2025 / (MS)