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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1886/2025 & I.A. 27927/2025**
M/S RAMACIVIL INDIA CONSTRUCTION PVT 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

CENTRAL PUBLIC WORKS DEPARTMENT

.....Respondent

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly Advocate and Mr. Manthena Srinivasu EE and Senior manager CPWD

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
04.12.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking the following reliefs:-
“a) Reject the Arbitral Tribunal constituted vide letter dated 30.10.2025 and consequently appoint Sh. Vinod Kumar Malik as the petitioner’s nominee arbitrator as nominated vide letter dated 06.10.2025; And/Or;



b) Direct the two nominee arbitrators to appoint the presiding arbitrator within 30 days as per the mandatory qualification specifically mentioned in clause 25 of GCC; And/Or;
c) Cost of this petition may be allowed in favour of the petitioner and against the respondents; And/Or;”

2. The brief facts are that the respondent floated a tender for the work of “Redevelopment of General Pool Residential Colony at Srinivaspuri, New Delhi (Phase-IIA) SH-Construction of 400 nos. Type-V and 190 nos. Type-VI quarters having single basement, three level podium parking and a Banquet Hall including all development works and services on EPC basis including comprehensive maintenance for five years after completion of work”. The petitioner participated in the tender and was the successful bidder.
3. Subsequently, the respondent awarded the work in favour of the petitioner *vide* Acceptance Letter dated 05.12.2022, pursuant to which an Agreement bearing No. 06/EE&SM-III/RP/2022-23 was entered into between the parties.
4. The General Conditions of Contract (“GCC”) of the said Agreement contains an arbitration clause being Clause No. 25, which reads as under:-

“Clause 25: Settlement of Disputes by Conciliation and Arbitration

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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 75 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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25.4 Appointment of Arbitral Tribunal of three Arbitrators:

The Arbitrator Appointing Authority shall prepare two separate lists of five Arbitrators each from the list of CPWD Empanelled Arbitrators, and send one to the party seeking arbitration and other to the responding party, within 15 days of the receipt of notice. The parties will then choose any one Arbitrator from the list provided to them within 15 days of receipt of the list. The Arbitrator Appointing Authority shall then appoint those chosen by the respective parties as Arbitrators and also a third Arbitrator from the list of CPWD Empanelled Arbitrators to act as presiding Arbitrator, within 15 days of receipt of choice from both the parties.



It is a term of this arbitration agreement that if the parties fail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empanelled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator from the said list.”

5. The petitioner received a show cause notice dated 02.05.2025 from the respondent under Clause No. 13 of the GCC of the Agreement stating that by reasons of supervening causes i.e., non receipt of permission for felling/transplantation of the affected trees, the work entrusted is under uncertainty and thereby, foreclosing the Agreement. The petitioner responded to the said show cause notice, after which there were communication between the parties.
6. Since there were disputes between the parties, the petitioner invoked the arbitration *vide* legal notice dated 06.10.2025 and nominated Mr. Vinod Kumar Malik (Retd. Special DG, CPWD) as its nominee Arbitrator.
7. The respondent in response to the notice dated 06.10.2025 issued a letter dated 10.10.2025 insisting for nomination of the petitioner's nominee Arbitrator from the list of five Arbitrators shared in the said letter and stated that if the petitioner does not nominate the Arbitrator from the proposed list, the respondent will appoint an Arbitrator from the said list. The respondent relied upon the Clauses No. 25.2 and 25.4 of the GCC of the Agreement and rejected petitioner's request. The said letter is extracted below:-



भारत सरकार
केन्द्रीय लोक निर्माण विभाग
कार्यालय: मुख्य अभियन्ता-सह-कार्यकारी निदेशक
पुनर्विकास परियोजना
जी.पी.आर.ए., कम्यूनिटी सेंटर
द्वितीय तल, कमरा संख्या 207
त्यागराज नगर, नई दिल्ली-110003



दूरभाष: 23411138, 23411743 फैक्स : 23411742
ई-मेल: delcpmrdp.cpwr@gmail.com

संख्या: 12(1)एई(एनटी)/पु० वि० परियोजना/2025-26/809(TE) दिनांक: 10/10/25

सेवा में

M/s Ramacivil India Construction Pvt. Ltd.,
BP-22, West Patel Nagar,
New Delhi :- 110008

कार्य का नाम:- Redevelopment of General Pool Residential Colony at Srinivaspuri, New Delhi (Phase-IIA)- SH: Construction of 400 nos. Type-V and 190 Type-VI quarters having single basement, three level Podium parking and a Banquet Hall including all development works and services on EPC basis i/c comprehensive maintenance for five years after completion of work.

करार संख्या:- 06/EE&SM-III/RP/2022-23

विषय:- Notice under Clause 25 of Contract Agreement for appointment of arbitrator

संदर्भ:- आपके कार्यालय के पत्र संख्या : शुच्य, दिनांक: 06.10.2025

महोदय,

This is in reference to your above mentioned letter wherein you have applied for the appointment of an Arbitration Tribunal, as certain disputes have arisen between the parties in respect of the above subject work. Additionally, a notice as per the proforma prescribed in Appendix XVIII of General Conditions of Contract 2022 EPC Projects, has also been submitted by your good self seeking the appointment of the arbitration Tribunal —without first taking recourse to the process of conciliation as stipulated under Clause 25, Sub-Clause 25.1 of the said Contract Agreement.



Furthermore, you have nominated Sh. Vinod Kumar Malik (Retired SPL DG, CPWD), A 35/32, DLF Phase-1, Sector 26, Gurgaon 122002 as your nominee arbitrator and have requested the Arbitrator Appointing Authority to nominate an arbitrator on behalf of the responding party.

Your kind attention is invited to the provisions of Clause 25, Sub-Clause 25.2(c) of the GCC 2022 for EPC Projects, as reproduced below:

“ ... a list of empanelled Arbitrators has been prepared in CPWD, and the parties shall have option to select an Arbitrator from the list...”

Additionally, Sub-Clause 25.4 of Clause 25 stipulates:

“ The Arbitrator Appointing Authority shall prepare two separate lists of five Arbitrators each from the list of CPWD Empanelled Arbitrators, and send one to the party seeking arbitration and other to the responding party, within 15 days of the receipt of notice. The parties will then choose any one Arbitrator from the list provided to them within 15 days of receipt of the list. The Arbitrator Appointing Authority shall then appoint those chosen by the respective parties as Arbitrators and also a third Arbitrator from the list of CPWD Empanelled Arbitrators to act as presiding Arbitrator, within 15 days of receipt of choice from both the parties.

It is a term of this arbitration agreement that if the parties fail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empanelled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator..... “

In light of the above, it is to inform that your nomination is not as per the condition of the contract agreement. Sri Vinod Kumar Malik is not included in the list of the CPWD Empanelled Arbitrators. Copy of the CPWD Directorate Office Memorandum No. 02/SE(TLC)/Empanelment-Arb.2024-25/69 dated 13.06.2025 is enclosed for your ready reference.



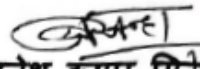
Please note, both the parties of the contract have to act as per the conditions of the contract and are bound within the four walls of the contract. Therefore, as per the provisions of the above-mentioned clauses, you are required to choose **one Arbitrator from the list of five CPWD Empanelled Arbitrators provided by the Appointing Authority.**

Accordingly, I, Brajesh Kumar Sinha, Chief Engineer-cum-Executive Director (Redevelopment Project Zone), CPWD under Clause 25 of the Contract Agreement, hereby propose the following five empanelled arbitrators of CPWD for your selection:

Sl. N o.	Name & D.O.B	Address	E-mail & Mob No.
1.	AKHILESH KUMAR D.O.B-10.02.1959 AKU10021959AEEC 071983	Flat No. 3111, Osimo Tower, MahagunMezzaria, Sector-78, Nodia, UP- 201304	981140440 (M) er.akhilesh@yahoo.co.in
2.	KRISHNA MURARI SONI D.O.B- 08.07.1959 KMSO8071959AEEC 071983	92A, Pocket-A, Mayur Vihar Phase-II, Delhi-110091.	9971128780 (M) dr.kmoni@gmail.com
3.	MANOJ KUMAR SHARMA D.O.B- 05.11.1959 MKS05111959AEEC 091985	E-I-I, Guest House, IIM Kashipur, Pin-244713	9811227404 (M) manojbhu@yahoo.co.uk mk.sharma59@gov.in
4.	LALIT KAPOOR D.O.B- 21.04.1959	274, Vigyapan Lok, Mayur Vihar Phase-I, Delhi-110019	9950000677 lkapur214@gmail.com
5.	PIYUSH AGARWAL D.O.B- 15.03.1960	Flat No -C 307, Sheetal Vihar CGHS, Plot 10, Sector 23, Dwarka New Delhi- 110077	9117643653 Piyushagarwal2@gmail.com



You are therefore requested to kindly intimate to the undersigned the name of the arbitrator selected by you from the above list. It is further informed that in case you fail to select an arbitrator of your choice from the proposed list within 15 days of receipt of this letter, the undersigned shall proceed to select and appoint an arbitrator of his choice from the same list of five empanelled arbitrators.


ब्रजेश कुमार सिन्हा 10/25
मुख्य अभियंता-सह-कार्यकारी निदेशक

8. The petitioner replied *vide* letter dated 14.10.2025 disputed the panel suggested by the respondent, stating that the stand taken by the respondent is in contravention of the law.
9. Thereafter, *vide* letter dated 24.10.2025 the respondent proposed Sh. Upendra Malik as its nominee Arbitrator and *vide* letter dated 29.10.2025 the respondent appointed Mr. Manoj Kumar Sharma as the nominee Arbitrator of the petitioner. The respondent also appointed Mr. Sudhir Kumar Chawla as the presiding Arbitrator, *vide* letter dated 30.10.2025.
10. Hence, the petitioner has filed the present petition.
11. In my view, the conduct of the respondent is not in consonance with the 1996 Act and is in direct violation of the law as laid by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641***. The Hon'ble



Supreme Court in *Central Organisation for Railway Electrification (supra)*, while laying down the benefits of a three-member Arbitral Tribunal, 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 leads to apprehension of impartiality and is against the principles of equal participation as inscribed in the 1996 Act. The relevant paragraphs from the said judgement are extracted below:-

“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.

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.

***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.*

***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)

12. In view of the law as laid down in ***Central Organisation for Railway Electrification (supra)***, the respondent could not have insisted that the petitioner appoint its nominee Arbitrator from the curated list of Arbitrators provided by the respondent. Although the arbitration clause between the parties, especially Clause No. 25.4 of the GCC, provides that the each party shall choose its nominee Arbitrator from the lists of five Arbitrators from the list of CPWD Empanelled Arbitrators, however, the same is redundant in view of the law as laid down in



Central Organisation for Railway Electrification (supra).

13. The respondent should be aware of the law as laid down by the Hon'ble Supreme Court and must act in accordance with the same. The conduct of the respondent as narrated above being in direct opposition to the law as laid down by the Apex Court, leads to a considerable wastage of effort, time and energy.
14. The law laid down by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification (supra)***, must be followed in its true letter, spirit and intent as well as the objective of the 1996 Act, which is party autonomy and equal participation.
15. For the said reasons, the present petition is allowed and the letter dated 30.10.2025 issued by the respondent stands cancelled.
16. Mr. Vinod Kumar Malik will be the petitioner's nominee Arbitrator, who along with the respondent's nominee, shall appoint a presiding Arbitrator within 30 days of receipt of this order and thereafter, proceed with the arbitration proceedings.
17. The present petition is disposed of in aforesaid terms, with pending applications if any.

JASMEET SINGH, J

DECEMBER 4, 2025 / (MS)