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

+ **ARB.P. 2003/2025**

M/S MIA CONSTRUCTION PVT LTD

.....Petitioner

Through: Mr Avinash Trivedi and Mr Rahul
Aggarwal, Advs.

versus

PUBLIC WORKS DEPARTMENT GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Nitin Kumar, PC with Mr.
Deepak Gautam, AE

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

24.12.2025

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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. The brief facts are that the petitioner participated in the percentage rate tender for the work of "Strengthening of various roads such as Najafgarh Road, Punjab Garden Road, Smt. Ginni Devi Road, Bhagwan Das Road, Hemwati Nandan Bahuguna Marg, road from Milan Cinema to H. No. 19/289, Road from House No. H-1 to I-47 near Milan Cinema Karampura and Road from House HIL to bus terminal of 234, HIL Karampura, Lal Sai Mandir Marg D story, Pankaj Batra Marg under PWD Maintenance Division WR- 2 / Sub Division WR-21, New Delhi during 2022-23" and was declared as the successful bidder.



3. Subsequently, the respondent department issued an Acceptance Letter dated 18.04.2023 in favour of the petitioner. Later, the parties entered into an Agreement for execution of the work.
4. The said Agreement contains an arbitration clause being Clause No. 25 of the General Conditions of Contract (“GCC”), which reads as under:-

“CLAUSE 25

Settlement of Disputes by Conciliation and Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used in 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 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:

25.1 Conciliation: 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 or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or



carrying out of the work to be unacceptable and is disputed; such party may promptly refer such disputes and amount claimed for each dispute to the Conciliator (Special Director General or the Additional Director General concerned with the work, as applicable) in the proforma prescribed in Appendix XVII mentioned in Schedule F, under intimation to the other party. The Conciliator may then request each party to submit to him a brief written statement describing the disputes and the points at issue. Each party shall send a copy of such statement to the other party. At any stage of the conciliation proceedings, the Conciliator may request a party to submit to him such additional information as he deems appropriate. When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, he may reformulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on a settlement of the disputes, they may draw up and sign a written settlement agreement on non-judicial stamp paper as per Stamp Act. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. The termination of conciliation proceedings shall be in accordance with Section 76 of The Arbitration and Conciliation Act, 1996. No party shall be represented before the said Conciliator by an



advocate or legal counsel. The conciliation proceedings shall be completed within 45 days from the receipt of reference. This time may be enlarged by 15 days by the Conciliator. The conciliation proceedings shall be deemed to have been terminated at the end of 60 days from the receipt of reference.

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 crores, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs 100 crores or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.

(b) Qualifications of Arbitrators: It is a term of this contract



that each member of the Arbitral Tribunal shall be a 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 the Arbitrator at the time of appointment shall not exceed 70 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 the option to select an Arbitrator from the list sent to them.

25.3 Appointment of Sole Arbitrator: The parties may opt for appointment of the Arbitrator of the Ministry of Housing and Urban Affairs. In such cases, the party seeking arbitration has to submit an express agreement in writing as per Appendix XIX towards the waiver of Section 12(5) of the Arbitration and Conciliation Act, 1996 along with the notice for appointment of Arbitrator in the proforma prescribed in Appendix XVIII, under intimation to the other party. The Arbitrator Appointing Authority shall, within 30 days of receipt of the said notice, appoint Arbitrator of the Ministry of Housing and Urban Affairs as Arbitrator in the matter, provided the other party



also submits a waiver of Section 12(5), ibid in Appendix XIX within 7 days of the receipt of the said notice.

Where any one of the parties does not opt for the Arbitrator of the Ministry of Housing and Urban Affairs or does not submit the waiver agreement, the Arbitrator Appointing Authority shall propose five Arbitrators from the list of CPWD empanelled Arbitrators to the party seeking arbitration under intimation to the other party within 15 days of receiving the notice. The party seeking arbitration shall give his choice for one of them within 15 days of receiving the list and the Arbitrator Appointing Authority shall appoint the chosen person as the Sole Arbitrator within 15 days of the receipt of choice.

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.

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.

25.5 Applicable Law: The provisions of Arbitration and Conciliation Act, 1996 (Act 26 of 1996) and any further statutory modification or re-enactment thereof shall be applicable. Further, the fast-track procedure for arbitration contained in Section 29B of the said Act shall apply.

25.6 Fee Applicable to Arbitrator(s): The fee applicable to the arbitral tribunal shall be as per CPWD OM No. 2/2006/SE(TLC)/CSQ/137 dated 19.11.2019 (or latest amendment) and shall be shared equally by both the parties.

25.7 Place of Arbitration: The place of arbitration shall preferably be as mentioned in Schedule F. However, the Arbitral Tribunal may decide the place in consultation with both the parties.

25.8 Terms of reference: The Arbitral Tribunal shall adjudicate on only such disputes as are referred to it by the Arbitrator Appointing Authority and give separate award against each dispute referred to him and shall give reasons for



the award in all cases where the total amount of the claim by any party exceeds Rs. 1,00,000.

25.9 Interest on Arbitration Award: It is also a term of this arbitration agreement that where the Arbitral Award against any dispute is for the payment of money, no pre-suit and pendente lite interest shall be payable on any part of the Arbitral Award.”

5. Since disputes arose between the parties, the petitioner invoked arbitration *vide* legal notice dated 27.08.2025 and thereafter, filed the present petition.
6. Mr. Kumar, learned Panel Counsel for the respondent, states that the petitioner has not undertaken conciliation proceeding as provided under Clause No. 25 of the GCC.
7. I am unable to agree with the same. A perusal of the petitioner's letter dated 05.07.2025 shows that the petitioner wrote to the Executive Engineer of the respondent department under Clause No. 25.1 of the GCC. The said letter is extracted below:-



Dated: 05.07.2025.

To.

The Executive Engineer
PWD Division, M-112(N)/
WR-2, GNCTD, Road no. 43,
Salnik Vihar, Delhi-110034

Name of Work:- Strengthening of various road such as Najafgarh road, Punjab garden road, Smt. Ginni Devi road, Bhagwan Das road, Hemawati Nandan Bahuguna Marg, road from Milan Cinema to H. No. 19/289, Road from House No. H-1 to I-47 near Milan Cinema Karampura and road from house HIL to bus terminal of 234, HIL Karam pura, Lal Sai mandir Marg D story, Pankaj Batra Marg under PWD maintenance division WR-2/sub division WR-21, New Delhi during 2022-23.

Agreement no: 02/EE/CRMD M-112(N)/WR-2/2023-24

Sub: Notice under clause 25 (i) of Agreement.

Dear Sir,

Whereas certain disputes have arisen out of the said contract and we are serving you notice under clause 25(i) of the Agreement for resolving our disputes and also enclosing list of claims with this letter for ready reference.

However, we reserve our right to Add/ Delete/Modify our claims at the time of proceedings or before that.

Thanking you

Yours Faithfully,

for :- M/s M I A Construction Pvt. Ltd.

Auth. Signatory

Copy to: - The Superintending Engineer, West Maintenance Circle, PWD, Hemawati Nandan Bahuguna Marg, Karam pura, New Delhi-110015 Delhi for information and necessary action for resolving our disputes.



8. However, on receiving no reply from the respondent, the petitioner sent another letter dated 15.07.2025 addressed to the Chief Engineer (North) of the respondent department under Clause No. 25.1 and 25.2 of the GCC.
9. Since, petitioner did not receive any reply, it invoked arbitration *vide* legal notice dated 27.08.2025.
10. Later, the respondent department *vide* letter dated 17.09.2025 replied to the petitioner's letter dated 15.07.2025 and rejected all the claims of the petitioner.
11. From the above said facts, it is clear that the petitioner duly made an attempt for conciliation and however, the same did not fructify.
12. Mr. Kumar, learned Panel Counsel for the respondent states that in the present case the arbitration clause is not in dispute.
13. Both the parties are *ad idem* that there is an arbitration clause and there are disputes pending between the parties.
14. I am satisfied that there exists a valid arbitration clause and there are disputes between the parties which need to be adjudicated through the arbitral mechanism.
15. The arbitration clause (as reproduced above) mandates the qualification of the arbitrator in Clause No. 25.2(b) of the GCC.
16. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) The Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC') shall appoint the Sole Arbitrator (in accordance with



the required qualification under the arbitration clause) to adjudicate the disputes between the parties.

- ii) The arbitration will be held under the aegis and rules of 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 appointment of the Arbitrator.

17. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

DECEMBER 24, 2025 / (MS)