IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 22.04.2026
DELIVERED ON: 08.05.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 102 OF 2026

M/S AGARWAL AND CO.
VERSUS
UNION OF INDIA

Appearance:

Mr. Ayan Banerjee, Adv.
Mr. Arijit Bhowmick
..... for the petitioner

Mr. Sukanta Ghosh, Adv.
Mr. Rohan Chamria, Adv.
..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator in terms of Contract Agreement No. CEKZ/PAN/04 of 2017–2018.

2. The Respondent awarded the aforesaid contract to the Petitioner, who was the successful bidder pursuant to a tender issued by the Respondent for the supply of furniture articles for certain units at Panagarh. The Executive Engineer of the Respondent approved the order sheet on 09.06.2017, whereunder the stipulated period for completion of the contract was nine months, commencing from 11.06.2017 and ending on 07.03.2018. In terms of the said order sheet, the Petitioner was required to supply various types of steel and wooden furniture items at GE (Project) Panagarh, as specified in the Bill of Quantities.

3. It is the case of the Petitioner that the main building wherein the furniture was to be delivered was not made available by the Respondent, and that the officers of the Respondent verbally directed the Petitioner to withhold supply. The Petitioner formally notified the said factual position to the Respondent vide letter dated 02.02.2018. Thereafter, at the instance of the Respondent, by letters dated 07.02.2018 and 31.05.2018, the Petitioner sought extension of time for performance on the grounds of non-availability of storage space and non-readiness of the buildings. The Respondent granted an extension of time vide letter dated 07.07.2018.

4. The Petitioner states that it completed the contracted work on 31.08.2018, and that the said completion was duly certified by GE (P) Panagarh vide letter No. 8006/111/E8 dated 05.09.2018.

5. It is further the case of the Petitioner that owing to various fundamental breaches committed by the Respondent, the Petitioner was compelled to procure furniture items at increased rates, thereby suffering substantial financial losses, and that the Petitioner is accordingly entitled to reimbursement thereof. The Petitioner further claims that the Respondent had assured payment at the actual cost incurred plus fifteen percent profit, and that in reliance upon the said assurance, the Petitioner raised running bills at enhanced rates. It is alleged that the Respondent, however, coerced the Petitioner into accepting Running Account bill payments at the original contract rates. The final payment was released to the Petitioner on 16.01.2021.

6. The Petitioner raised a final bill dated 23.04.2019 at revised rates. The Respondent, vide letter dated 05.02.2021, informed the Petitioner that the final bill had been paid on 16.01.2021. By letter dated 01.05.2021, the

Petitioner informed the Respondent that the said final payment was accepted under protest.

7. Clause 37 of the General Conditions of Contract, as amended, provides that disputes and differences arising between the parties shall be referred to a Sole Arbitrator to be appointed by the Engineer-in-Chief, who is the designated Appointing Authority under the contract. The Petitioner, vide letter dated 17.08.2019 addressed to the Engineer-in-Chief of the Respondent, invoked the arbitration clause and called upon the Respondent to constitute an Arbitral Tribunal by appointing a Sole Arbitrator. By the said letter, the Petitioner raised the following five disputes: (i) balance amount of the final bill; (ii) reimbursement of costs incurred for loading, unloading, and transportation of furniture from the furniture yard to various barracks, and for re-polishing and repainting of furniture; (iii) delay and restriction in release of Running Account payments; (iv) past, *pendente lite*, and future interest; and (v) costs of the arbitration proceedings.

8. Notwithstanding receipt of the aforesaid letter dated 17.08.2019, the Respondent neither appointed a Sole Arbitrator nor responded to the request. Consequently, the Petitioner has filed the present petition.

<u>Submissions on behalf of the Petitioner</u>

9. Mr. Ayan Banerjee, learned Counsel for the Petitioner submitted that the present petition is fully maintainable under Section 11 of the Arbitration and Conciliation Act, 1996, inasmuch as a valid and subsisting arbitration agreement exists between the parties in terms of Clause 37 of the General Conditions of Contract forming part of Contract Agreement No. CEKZ/PAN/04 of 2017–2018, which provides that all disputes and differences arising between the parties shall be referred to a Sole Arbitrator to be appointed by the Engineer-in-Chief, being the designated Appointing Authority under the contract. It was further submitted that the Petitioner had duly and validly invoked the said arbitration clause vide letter dated 17.08.2019 addressed to the Engineer-in-Chief of the Respondent, setting out five specific disputes, namely, the balance amount of the final bill, reimbursement of costs incurred for loading, unloading, transportation, re-polishing and repainting of furniture, delay and restriction in release of Running Account payments, past, *pendente lite* and future interest, and costs of the arbitration proceedings. It was contended that despite due receipt of the said letter, the Respondent neither appointed a Sole Arbitrator nor responded thereto, thereby rendering the intervention of this Court necessary and the present petition maintainable.

10. Learned Counsel further submitted that the disputes raised by the Petitioner arise from specific and established breaches on the part of the Respondent, in as much as the Respondent failed to make the main building available for delivery of furniture within the stipulated period, and that the Respondent's officers verbally directed the Petitioner to withhold supply, thereby compelling the Petitioner to seek extension of time, which was eventually granted vide letter dated 07.07.2018. It was submitted that as a direct consequence of the delays and defaults attributable to the Respondent, the Petitioner was compelled to procure furniture items at increased market rates, thereby suffering substantial financial losses. It was further contended that the Respondent had expressly assured the Petitioner of payment at actual cost incurred plus fifteen percent profit, and that in reliance upon such assurance, the Petitioner raised running bills at enhanced rates, but was thereafter coerced into accepting Running Account bill payments at the original contract rates, and that the final payment was released only on 16.01.2021, with the Petitioner having accepted under protest vide letter dated 01.05.2021, expressly reserving all rights and claims.

11. Learned Counsel lastly submitted that the scope of inquiry before this Court at the stage of a petition under Section 11 is limited to the existence of a valid arbitration agreement and the failure of the designated authority to make an appointment, and that the merits of the disputes and all substantive questions are exclusively within the domain of the Arbitral Tribunal to be constituted. It was urged that the Court ought to adopt a liberal and pro-arbitration approach, and that the right of the Petitioner to have its disputes resolved through arbitration cannot be defeated by the inaction or default of the Respondent or of the designated Appointing Authority. Accordingly, it was prayed that a Sole Arbitrator be appointed to adjudicate the disputes arising out of Contract Agreement No. CEKZ/PAN/04 of 2017–2018. The Petitioner has relied upon the Judgment of the Hon'ble Supreme Court in ***SBI General Insurance Company Ltd. Vs Krish Spinning*** reported as ***2024 SCC Online SC 1754.***

Submissions on behalf of the Respondent

12. Learned Counsel for the Respondent submitted that the disputes raised by the Petitioner are not arbitrable, and that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is liable to be dismissed on that ground. It was contended that Clause 37 of the General Conditions of Contract expressly excludes from the scope of arbitration those disputes for which the decision of the CWE or any other person is, under the contract expressed to be final and binding, and that the arbitration clause itself stipulates reference of disputes to the sole arbitration of a serving officer having a degree in engineering or equivalent qualification, or having passed the final or direct final examination of Sub-Division II of the Institution of Surveyors of India recognised by the Government of India, to be appointed by the authority mentioned in the tender documents. It was further contended that Clause 7 of the contract, dealing with Time, Delay and Extension, expressly provides that where delivery of supplies is delayed on account of non-availability of Government stores, the Accepting Officer may, at his discretion, grant such extension of time as he deems fit, and that such decision shall be final and binding on the contractor, who shall be obliged to complete delivery within the extended period so granted. Learned Counsel placed particular emphasis on the further stipulation in Clause 7 that no claim in respect of compensation or otherwise, howsoever arising as a result of extensions granted under the said conditions, shall be admitted.

13. Learned Counsel for the Respondent submitted that in the present case, the extension of time was granted to the Petitioner precisely on the ground of non-availability of Government stores, and that the Petitioner completed the contract on 31.08.2018, whereupon the due completion certificate was issued on 05.09.2018. It was contended that the final bill was paid to the Petitioner on 16.01.2021 and that the same was received by the Petitioner without any demur or protest, and that the Petitioner's subsequent attempt to characterise the acceptance of the final payment as having been made under protest is an afterthought unsupported by the facts and circumstances of the case. It was accordingly submitted that the

Petitioner's claims for compensation, enhanced rates, and reimbursement of additional costs arising from the delay are expressly and contractually barred by virtue of Clause 7 of the GCC, and that such claims do not constitute arbitrable disputes within the meaning of the arbitration clause.

14. In support of the aforesaid contentions, Learned Counsel for the Respondent placed reliance upon the decisions of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd.,*** reported as **(2018) 17 SCC 607**, and ***Harsha Constructions v. Union of India,*** reported as **(2014) 9 SCC 246**, and urged that in view of the express contractual bar on claims arising from extensions of time granted under Clause 7, and the finality attached to the decisions of the designated authority under the contract, the disputes as raised by the Petitioner are not arbitrable. It was accordingly submitted that this Court ought not to exercise its jurisdiction under Section 11 of the Act to appoint an arbitrator in the present case.

Legal analysis

15. This Court has heard the arguments advanced by learned Counsel for both parties and has examined the documents and judgments produced before it.

16. Having considered the facts of the case and the submissions advanced by learned Counsel for both parties, the following questions fall for consideration before this Court: first, whether a valid and subsisting arbitration agreement exists between the parties; second, whether the disputes raised by the Petitioner are arbitrable having regard to the express terms of the contract; and third, whether this Court ought to exercise its jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator.

17. On the first question, it is not in dispute between the parties that Contract Agreement No. CEKZ/PAN/04 of 2017–2018 contains an arbitration clause in the form of Clause 37 of the General Conditions of Contract, which reads as under:

> *"All disputes between the parties to the contract (other than those for which the decision of CWE or any other person is by the Contract expressed to be final and binding) shall after written notice by either party to the contract or to the other of them, be referred to the sole arbitration of a serving officer having degree in engineering or equivalent or having passed final/direct final examination of sub division-II of institution of Surveyor of India recognised by Govt of India to be appointed by the authority mentioned in the tender documents."*

18. A plain and grammatical reading of Clause 37 discloses several material elements which require interpretation. First, the clause is drafted in broad and general terms, covering *"all disputes between the parties to the contract,"* thereby evidencing a clear contractual intention to submit the generality of disputes to arbitration. Second, the clause carves out from its ambit only those disputes *"for which the decision of CWE or any other person is by the Contract expressed to be final and binding."* This exclusion is specific and limited in its operation. It does not exclude all disputes from arbitration, but only those in respect of which finality has been expressly and specifically conferred upon a designated authority by another provision of the contract. Third, the clause prescribes the qualifications of the arbitrator, being a serving officer holding a degree in engineering or equivalent qualification, or having passed the requisite examination of the Institution of Surveyors of India recognised by the Government of India, to be appointed by the authority specified in the tender documents. The said requirement goes to the mode of constitution of the Arbitral Tribunal and not to the substantive scope of the arbitration agreement. Fourth, the clause is triggered upon written notice by either party to the other, and the Petitioner has admittedly issued such notice vide letter dated 17.08.2019. The existence of a valid arbitration agreement between the parties satisfying the requirements of Section 7 of the Act is therefore beyond doubt, and the threshold jurisdictional requirement under Section 11 of the Act is accordingly satisfied.

19. The more contested question is whether the disputes raised by the Petitioner fall within the scope of Clause 37, or whether they stand excluded therefrom by virtue of the express terms of Clause 7 of the GCC. The said Clause 7 reads as follows:

> *"Clause 7 — Time, Delay and Extension*
>
> *(b) If the delivery of the supplies is delayed by the non availability of Government Stores mentioned in Schedule 'B' then, in such event, notwithstanding the provisions herein before contained, the Accepting officer may in his discretion grant such extension of time as may appear reasonable to him and the same shall be communicated to the Contractor by the GE in writing. The decision so communicated shall be final and binding on the contractor and the contractor shall be bound to complete the delivery of the supplies within such extended time.*
>
> *(c) No claim in respect of compensation or otherwise howsoever arising as a result of extensions granted under conditions (a) and (b) above shall be admitted."*

20. On a closer and more precise reading, Clause 7(b) and Clause 7(c) are not one composite provision operating as a single bar, rather they are two distinct and independent clauses, each operating within its own separate sphere, and must be interpreted accordingly.

21. Clause 7(b) is confined exclusively to the question of extension of time. It deals with one specific situation, where delivery is delayed due to non-availability of Government Stores, and empowers the Accepting Officer to grant a reasonable extension of time, which is to be communicated in writing by the GE. The finality declared in Clause 7(b), namely that *"the decision so communicated shall be final and binding on the contractor,"* attaches only and exclusively to the decision on extension of time. The contractor cannot dispute the decision of the Accepting Officer either on whether extension ought to be granted or on the quantum of extension so granted. That decision is final, and the contractor is bound to complete supply within the extended period. The finality under Clause 7(b) is therefore strictly limited to the domain of extension of time and nothing else. It does not speak to compensation. It does not address the contractor's financial claims. It does not declare any decision on monetary matters to be final. Its operation is entirely and solely confined to the Accepting Officer's decision regarding the grant and quantum of extension of time.

22. Clause 7(c), on the other hand, is an entirely separate and independent provision. It states that no claim for compensation or otherwise arising as a result of extensions granted under conditions (a) and (b) shall be admitted. Significantly, Clause 7(c) does not replicate or extend the finality language contained in Clause 7(b). It does not state that any decision of the Engineer or Accepting Officer on the question of compensation shall be final and binding, it merely provides that no such claim shall be admitted. This is a crucial distinction. The absence of a finality clause in Clause 7(c) means that the bar created thereby is a substantive contractual restriction on the admissibility of a particular category of claims; it is not a provision that vests final and binding decision making authority in any designated authority on the question of compensation. Under Clause 37 of the GCC, the disputes excluded from arbitration are only those *"for which the decision of CWE or any other person is by the Contract expressed to be final and binding."* Since Clause 7(c) does not declare any decision on compensation to be final and binding, compensation claims do not fall within the exclusionary limb of Clause 37. The question of whether compensation is payable, and if so in what amount, is not a matter in respect of which finality has been contractually conferred upon any authority. It is, therefore, a dispute that falls squarely within the broad sweep of the arbitration clause under Clause 37.

23. The correct legal position that emerges from this reading is therefore as follows. The contractor is bound by the Accepting Officer's decision on extension of time under Clause 7(b) and cannot carry that decision to arbitration, as that question stands excluded. However, the question of whether compensation is payable, and whether the bar contained in Clause 7(c) applies in the facts and circumstances of the present case, remains a dispute in respect of which no authority has been vested with a final and binding decision under the contract. That question, therefore, falls squarely within the broad sweep of Clause 37, which covers *"all disputes between the parties"* other than those expressly declared final and binding. The contractor who is aggrieved by the denial of compensation is accordingly entitled to agitate such grievance before the Arbitral Tribunal.

24. This Court is further of the view that the broad language of Clause 37, covering *"all disputes between the parties,"* must be given its natural and full meaning. It is a well-settled canon of construction that where an arbitration clause is couched in wide and general terms, it should be construed liberally so as to bring within its ambit all disputes that the parties could reasonably be said to have intended to submit to arbitration. The exclusion of a category of disputes from such a broadly worded clause must be express, specific, and unambiguous. The bar in Clause 7(c), read in the context of Clause 37, does not constitute such an express and unambiguous exclusion from the arbitration clause. At best, it constitutes a contractual defence available to the Respondent on the merits of the Petitioner's claims, the validity and applicability whereof are matters to be determined by the Arbitral Tribunal on the merits.

25. In this context, the decisions relied upon by the Respondent merit consideration. In ***Harsha Constructions v. Union of India*** (supra), the Hon'ble Supreme Court held that where a contract contains an express and unambiguous clause barring claims arising from a particular event or circumstance, such claims cannot be referred to arbitration as they fall outside the scope of the arbitration agreement. Similarly, in ***United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd.*** (supra), the Hon'ble Supreme Court reiterated that a Court exercising jurisdiction under Section 11 is entitled to examine whether the dispute falls within the arbitration clause and may refuse appointment of an arbitrator where the dispute is plainly outside its scope. These decisions are not applicable to the facts of the present case, inasmuch as Clause 7(c) does not constitute an express exclusion from the arbitration clause within the meaning of Clause 37. It neither contains any finality clause nor vests any decision-making authority in any designated person on the question of compensation. The aforesaid decisions would have been applicable only if Clause 7(c) had expressly declared any decision on compensation to be final and binding, which it does not. Per contra, the Petitioner has placed reliance upon the decision of the Hon'ble Supreme Court in ***SBI General Insurance Company Ltd. v. Krish Spinning*** *(supra)*, wherein it was held that the scope of judicial interference at the stage of Section 11 is limited, that a Court at that stage ought not to enter into the merits or decide the validity of individual claims. It was further held that all disputes, including questions touching upon the maintainability and arbitrability of claims, ought to be referred to and decided by the Arbitral Tribunal unless the dispute is ex facie and manifestly non-arbitrable. The said decision squarely supports the Petitioner's case and is directly applicable to the facts and circumstances of the present petition.

26. The Petitioner's claims are furthermore not confined solely to compensation arising from the extension of time. The disputes raised also include the balance amount of the final bill, reimbursement of costs incurred towards loading, unloading, transportation, re-polishing and repainting of furniture, delay and restriction in release of Running Account payments, and interest, none of which are even arguably covered by the bar contained in Clause 7(c). A blanket exclusion of all claims at the threshold stage would therefore be wholly unwarranted and would risk foreclosing the Petitioner's right to adjudication in respect of claims that clearly fall within the scope of Clause 37.

27. This Court further notes that the Respondent's contention that the final bill was received by the Petitioner without demur or protest requires scrutiny. The Petitioner has placed on record its letter dated 01.05.2021, whereby it informed the Respondent that the final payment was accepted under protest. The question as to whether the said acceptance extinguishes the Petitioner's claims, or whether the protest was genuine and timely, constitutes a disputed question of fact which goes to the merits of the matter and is therefore more appropriately left for determination by the Arbitral Tribunal. It is well settled that disputed questions of fact cannot be adjudicated upon at the threshold stage of a petition under Section 11.

28. In view of the foregoing, this Court holds that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is maintainable, that a valid arbitration agreement exists between the parties in terms of Clause 37 of the GCC, that the Petitioner has validly invoked the said clause vide letter dated 17.08.2019, and that the Respondent's failure to appoint a Sole Arbitrator despite receipt of the said notice justifies the exercise of this Court's jurisdiction under Section 11 of the Act. The question of arbitrability of individual claims and the applicability of the bar under Clause 7(c) of the GCC are left open for determination by the Arbitral Tribunal, which shall examine the same on merits after affording full opportunity to both parties.

29. Accordingly, this Court appoints Mr. Sabir Ahmed, Adv., (Mob. No. 9007434193), as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of Contract Agreement No. CEKZ/PAN/04 of 2017–2018.

30. The appointment of the learned Arbitrator shall be subject to compliance with Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be entitled to fix his remuneration in accordance with the Fourth Schedule to the Act. The learned Arbitrator shall adjudicate all disputes between the parties, including questions of arbitrability and limitation. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

31. A copy of this order shall be communicated by the Petitioner to the learned Sole Arbitrator for necessary action.

32. With the aforesaid directions, the present petition stands allowed.

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(GAURANG KANTH, J.)

SAKIL AMED P.A.