

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Pronounced on : 02.03.2026
Uploaded on : 03.03.2026**

Arb P. No. 31/2025

J and Sons Construction Pvt. Ltd.

.....Petitioner

Through: Mr. Rohit Verma, Advocate

Vs

J&K Economic Reconstruction Agency & Ors.

.....Respondents

Through: Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

- 01.** Through the medium of the present petition, the petitioner has invoked jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
- 02.** As per case of the petitioner, it is a registered Company under the Companies Act, 2013 and it deals primarily in the construction and allied works.
- 03.** According to the petitioner pursuant to acceptance of its offer dated 21.05.2021 for execution of work, namely, Supply, Installation, Testing and Commissioning of

Electrical Items and construction of oxygen Plant Room for 15 sites in Jammu Division, acceptance letter bearing No. JTFRP/PMU/2021/OXY/2858-65 dated 25.05.2021 came to be issued by the respondents in favour of the petitioner. Thereafter, a Contract Agreement was executed between the petitioner and the respondents on 04.06.2021.

- 04.** As per the terms of the Contract Agreement, rates and other specifications which were mutually agreed by both the parties for supply and service of 300LPM and 500LPM Oxygen Generation Plant Rooms were to be adopted keeping in view the commercial viability of the Project. It has been submitted that contrary to the contractual obligations, the respondents unilaterally reduced the price of the items without adhering to the terms and conditions of the contract thereby violating Clause 8.2 of the contract. It has been alleged that when the petitioner protested against such reduction in prices, the respondents assured to pay him compensation in this regard. On the basis of this assurance, the petitioner went ahead with the execution of the allotted work under protest which was duly communicated to the respondents.

05. It has been further submitted that in the Electrical BOQ (Bill of Quality) for 300 LPM and 500 LPM of the Oxygen Generation Plant, the petitioner supplied low tension cables as per ordered quantity and the same was inspected by the respondents and its representatives. Certification in this regard was also attested. Vide letter dated 13.02.2023, the petitioner is stated to have apprised the respondents about it and requested them to provide address so that the material can be shifted in the warehouse of the respondents but the respondents failed to respond to the same. It has been submitted that final variation was verified and recommended by respondent No. 2 on 20.03.2024 which was duly uploaded on e-Office vide file No. 198616, but the same has not been approved.

06. According to the petitioner, despite the aforesaid hurdles created by the respondents and the losses having been suffered by the petitioner, the allotted work was completed by the petitioner on 10.02.2024 whereafter it handed over all the sites to the respondents. It has been submitted that the petitioner made numerous requests to the respondents to clear pending claims but no response was received from the respondents which resulted in

huge loss to the petitioner due to escalation of costs. It has been further submitted that requests of the petitioner for amicable settlement of the disputes have fallen on deaf ears of the respondents and, as such, the said disputes are now required to be resolved through the process of arbitration.

07. According to the petitioner, Clause 6.1 of the contract provides for settlement of disputes through arbitration in accordance with Arbitration and Conciliation Act, 1996. The petitioner is stated to have invoked the arbitration clause by nominating Mr. R. C. Sharma, Retd. Superintending Engineer, JPDCL as its arbitrator and sought nomination of Arbitrator by the respondents in terms of the arbitration clause by issuing letter of invocation dated 25.01.2025 but the respondents have failed to take any action in the matter. Hence the present petition.

08. The respondents have contested the petition by filing their reply. In their reply, it has been submitted that the Contract Agreement contained express conditions for Shipping, Contract Price, Terms of Payment, Taxes and Duties, Specifications and Standards, Transportation,

Inspection and Tests etc. It has been submitted that payments were made to the petitioner as per the agreed terms of the contract/approved BOQ in the mutual agreement and any additional items which were required as per the site conditions were made through approved variation which was Rs. 1.205 Cr. above the original cost of the project. It has been submitted that increase in the approved BOQ and other non-BOQ items has been granted and paid to the petitioner after the approval of the variation.

- 09.** It has been further submitted that the petitioner had to supply articles as per the requirement of the site after ascertaining the same and if the petitioner has made any excess purchase, the same cannot be attributed to the respondents. It has been submitted that the petitioner cannot raise unjustified and baseless claims.
- 10.** The respondents have not disputed the existence of arbitration clause nor have they disputed the invocation of the said clause by the petitioner.
- 11.** I have heard learned counsel for the parties and perused the record of the case.

- 12.** As already stated, the existence of Arbitration Agreement in terms of Clause 6.1 of the agreement is not in dispute. As per this clause, all disputes between the parties relating to any matter arising out of or connected with the agreement is to be resolved in accordance with the Arbitration and Conciliation Act, 1996. It further provides that Arbitral Tribunal shall comprise of three Arbitrators one each to be nominated by the Purchaser and Supplier with mutual consent. The third Arbitrator has to be chosen by the two arbitrators so appointed by the parties who shall act as presiding arbitrator and in case failure of the two arbitrators appointed by the parties to reach consensus within a period of 30 days from the appointment of the arbitrator appointed subsequent, the Presiding Arbitrator shall be appointed by the Chairman Institution of Engineers, J&K State Centre Srinagar.
- 13.** The invocation of arbitration clause by the petitioner is not in dispute. The petitioner, in terms of its invocation letter dated 25.01.2025, nominated Mr. R.C. Sharma, Retd. Superintending Engineer, JPDCL as the arbitrator but the respondents did not make any nomination of arbitrator on its behalf nor did they respond to the invocation letter issued by the petitioner.

- 14.** The contention of the respondents is that, whatever was required to be paid to the petitioner under the terms and conditions of the contract has already been paid which includes the amount on account of price variation and therefore, no dispute arises between the parties. This position is being disputed by the petitioner and it has been submitted that the respondents have unilaterally reduced the prices of items without adhering to the terms and the conditions of the contract.
- 15.** The question whether the respondents have reduced the prices of the items contrary to the terms and conditions of the contract or whether the respondents have paid whole of the amount due to the petitioner in accordance with the terms and conditions of the contract constitutes a dispute arising out of the terms of the contract. The same is required to be resolved through appointment of an Arbitrator in view of the existence of arbitration clause in the agreement.
- 16.** Though, petitioner has nominated its Arbitrator, yet the respondents have failed to nominate their arbitrator. Thus, the mechanism provided for appointment of an Arbitrator in Clause 6.1 for settlement of disputes cannot

work out. In this view of the matter, it would be appropriate to refer the disputes that have arisen between the parties to a sole Arbitrator.

17. Accordingly, the petition is **allowed** and **Hon'ble Mr. Justice Puneet Gupta, former Judge of this Court** is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.

18. A copy of this order shall be communicated to the learned Sole Arbitrator by the Registry of this Court within a period of ten (10) days from today and the learned Arbitrator is requested to forward the 'Statutory Statement of Disclosures' **under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996**, to the parties within a period of two weeks from the date of receipt of this order.

19. The parties shall appear before the learned Sole Arbitrator on the date and place, to be fixed by the learned Sole Arbitrator. It is further directed that all the arbitration costs and fees of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to the

final award that may be passed by the learned Arbitrator
in relation to the costs.

20. Disposed of.

**(SANJAY DHAR)
JUDGE**

**JAMMU
02.03.2026
SUNIL**

Whether the order is speaking ?	:	Yes
Whether the order is reportable ?	:	No

