

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Arbitration Application No. 51 of 2025

HCPL-MBPL (JV), a joint venture between Hardev Construction Private Limited having its registered office Pod at 8/2A, Garcha 2nd Lane, P.O & PS: Gariahat, Kolkata-19 and Mehrotra Buildcon Private Limited having its registered office at 9, Industrial Estate, Rewa Road, P.O & P.S. Satna, Dist. Satna, Madhya Pradesh- 485001 through their authorized person Mr. Avtar Singh, aged 54 years, S/o late Hardev singh, Director, M/s Hardev Construction Pvt. Ltd, R/o H. No- 1928, Sector-45, P.O + P.S. Jharsa, Dist. Gurgaon, Haryana-A 122003 Applicant

Versus

1. Rail India Technical and Economic Service Ltd. (RITES Ltd.), a Central Public Sector Enterprise and a Company incorporated under the Companies Act and having its registered office at Shikhar, Plot no. 1, Sector 29, PO+PS Sector 29 Gurugram 122001, Haryana through its General Manager (C & PU Head), RITES Ltd., Project Unit Office at 252/C, Road 1C Ashok pa 885 - Ashok Nagar Nagar, Ranchi-834002, Jharkhand.
2. Patratu Vidyut Utpadan Nigam Ltd.; through its Chairman-cum-managing Director, a public sector enterprise company formed as a joint venture between NTPC Ltd. And Jharkhand Bijli Vitaran Nigam Ltd. and incorporated under Companies Act, having its registered office at PTPS, Patratu, PO Patratu PS Patratu Dist-Ramgarh 829119, Jharkhand

... .. Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Applicant:	Mr. Arjun Kumar De, Advocate (through V.C)
	Mr. Manoj Kumar No. 2, Advocate
For the Respondent No. 1:	Ms. Diksha Dwivedi, Advocate
	Mr. Janak Kumar Mishra, Advocate
For the Respondent No. 2:	Mr. Prashant Pallav, ASGI
	Mr. Ayush, A.C to ASGI

04/Dated: 27.02.2026

1. Heard Mr De for the applicant, Ms Diksha Dwivedi for the 1st respondent, and Mr Prashant Pallav, learned ASGI for the 2nd Respondent.
2. This application seeks appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in the context of the works governed *inter alia* under the Letter of Acceptance No. RITES/RPO-

Ranchi/PVUNL-PKG-II (Civil)/2022/290 dated 08.04.2022 and Agreement No. RITES/RPO-Ranchi/PVUNL-PKG-II(Civil)/2022/05 dated 21.10.2022.

3. The applicant had earlier instituted W.P. (C) No. 7281 of 2023 seeking some relief in the context of the disputes that had arisen between the parties. This petition was dismissed inter alia on the ground that the contract between the parties contained an arbitration clause and therefore, it would be open to the applicant to invoke the same.

4. By this application, the applicant has invoked the arbitration clause and sought the appointment of an arbitrator. Mr De has relied upon **Perkins Eastman Architects DPC and others. Vs. HSCC (India) Ltd**¹ to submit that there is no question of allowing the Director (Projects) to appoint the Arbitrator, and if the parties cannot mutually agree, then it is for the court to appoint the Arbitrator.

5. Ms Dwivedi and Mr Prashant Pallav, learned counsel for the Respondents, submit that in this case, the pre-arbitration conciliation process, which was agreed to by and between the parties, was not complied with. They submit that without going through this process, there was no question of the applicant invoking the arbitration clause or seeking the appointment of any Arbitrator.

6. Without prejudice to the above contention, Ms Dwivedi and Mr Pallav submit that the arbitration clause does not apply where the total value of all the contractor's claims exceeds Rs. 2.00 crores. Ms Dwivedi points out that the scope of the contract was Rs. 89.00 crores, and a claim now raised

¹ AIR 2020 SC 59

by the applicant is Rs. 323.00 crores. This, according to her, is yet another ground why no arbitration is competent.

7. Mr. De contested the above contentions by pointing out that in the Arbitration Clause No. 25 issued along with the tender documents in 2021-2022, there was no ceiling that arbitration would be restricted only in respect of claims that do not exceed Rs. 2.00 crores. Further, he pointed out Clause 3.3-xiv to submit that parties were under no obligation to refer a dispute to conciliation as a precondition for invoking the arbitration clause. He further submitted that, should there be any dispute between Clause 25 enclosed along with the LOA or the tender documents, and a similar clause in the 2019 tender documents, which were also stated to be part of the contract, the former would prevail and not the referred 2019 clause.

8. The rival contentions now fall for my determination.

9. At the outset, it is necessary to note that the scope of the present proceedings is quite limited. In **SBI General Insurance Co. Ltd. versus Krish Spinning²**, the Hon'ble Supreme Court has held that the scope of such proceedings is ordinarily confined to the existence of an arbitration agreement based upon Section 7 of the Arbitration and Conciliation Act 1996 (said Act). Even the examination of the validity of the arbitration agreement is limited to the formal requirements, such as the requirement that agreement is agreement be in writing. The use of the term "examination" under section 11 (6-A) as distinguished from the use of the term "rule" under section 16 implies that the scope of enquiry under Section 11 (6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not

² (2024) 12 SCC 1

include contested or laborious enquiry, which is left for the Arbitral Tribunal to rule under Section 16 of the said Act. Further, the referral court's prima facie view on the existence of the arbitration agreement does not bind either the Arbitral Tribunal or the court enforcing the Arbitral Award.

10. The court clarified that by referring disputes to arbitration and appointing an Arbitrator under Section 11, the court exercises its powers. The referral court upholds and gives effect to the original understanding of the contracting parties that a specified dispute shall be resolved by arbitration. However, mere appointment of the Arbitral Tribunal does not in any way mean that the referral court is diluting the sanctity of the contractual terms. On the contrary, it ensures that the principle of arbitral autonomy is upheld and the legislative intent to minimize judicial interference in arbitral proceedings is given full effect. Once the Arbitral Tribunal is constituted, it is always open to the respondents to raise all permissible issues or urge that only after its objections are rejected by the Arbitral Tribunal, can the claims raised by the applicant be adjudicated. Appointment of an Arbitral Tribunal at the stage of Section 11 petition also does not mean that the referring courts forgo any scope of judicial review of adjudication done by the Arbitral Tribunal. The said Act vests the national courts with the power of a subsequent review, by which an award rendered by the Arbitrator may be challenged by any party to the arbitration.

11. Upon consideration of the rival contentions in the context of the scope of such proceedings, as explained by the Hon'ble Supreme Court in the case of **SBI General Insurance Co. Ltd. (Supra)**, I am satisfied that, at least prima facie, there exists an arbitration agreement in the contract that

governs the relationship between the parties. Such a contract is in writing and is contained as an Annexure to the LOA and other contractual documents, which the parties rely upon.

12. The scope of such an arbitration clause, including the issue as to whether there is any contradiction between the two arbitral clauses or whether the arbitration clause would apply only to a dispute in which the claim is less than Rs. 2.00 crores, are all matters that can always be raised before the Arbitral Tribunal. Such disputes, however, cannot be gone into at this stage while deciding the issue of the appointment of an Arbitral Tribunal.

13. Therefore, the objections now raised by Ms Dwivedi and Mr Pallav cannot be entertained at this stage. However, it is clarified that the respondents would be entitled to raise such objections before the Arbitral Tribunal once it is constituted, and the Arbitral Tribunal will have to rule on such objections in accordance with the law. The mere fact that this Court is now appointing or constituting an Arbitral Tribunal or that the previous petition was dismissed due to the alternate remedy does not mean that the objections now raised have been adjudicated upon or rejected by this Court. Such objections are explicitly kept open to be raised before the Arbitral Tribunal in accordance with the law. Such objections, however, cannot detain this Court from proceeding to appoint or constitute an Arbitral Tribunal because, at least prima facie, there exists an arbitration agreement and disputes have obviously arisen between the parties.

14. Therefore, Mr Ambuj Nath, former judge of this Court, residing at Flat No. 201, Block- B, Shivam Heights, Ghaghra, Namkum, Ranchi, is appointed as Arbitrator to adjudicate the disputes between the parties.

15. The appointment, as aforesaid, is subject to the Ld Arbitrator not affected by the disabilities as contemplated under the Seventh Schedule of the said Act and his furnishing a declaration to that effect before entering upon the reference. The fees of the learned Arbitrator shall be in accordance with the fourth Schedule to the said Act and shall be equally borne by all the parties. The learned Arbitrator should endeavour to conclude the proceedings expeditiously, having regard to the mandate of the legislature under Section 29A of the Said Act.

16. As noted earlier, all contentions of the respondents referred to above or otherwise are left open to be decided in accordance with the law. In fact, all contentions of all parties on preliminary objections, merits, etc., are left open for decision by the learned Arbitrator in accordance with law.

17. The arbitration application is disposed of in the above terms without any order for costs.

18. All concerned are to act on an authenticated copy of this order.

(M. S. Sonak, C.J.)

February 27, 2026

N.A.F.R.

Ranjeet/R.Kr./Cp.2

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