

(2026:JHHC:5959)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 54 of 2025

M/s. Royal- ITL, a Joint Venture, having its Corporate Office at Godrej Waterside Building, Tower No-1, 4th Floor No 401, Plot No. 5, DP Block, Salt Lake Sector V, P.O Bidhan Nagar, P.S Electronics Complex, District, Kolkatta- 700091 (West Bengal) through its Authorised Signatory Mr Sudip Bhowmick, Aged about 55 Years, son of Ashim Bhowmick, Resident of 20, Purba Sinthee By Lane, P.O and P.S Dumdum, District Kolkata - 700 030 (West Bengal).

.... Petitioner

Versus

1. M/s RITES Limited, Rites Bhawan, No. 1, Sector-29, P.O Gurugram, P.S Gurugram, District Gurugram-122 001.
2. Group General Manager, RITES Limited, RITES Office Building, Plot No DJ/20, Action Area-1D, New Town Rajarhat, P.O Rajarhat, P.S Rajarhat, District, Kolkata, Pin 700156.
3. G. M (C) RITES Limited, H.N 402 b, Road No 4C, Ashok Nagar, P.O & P.S Ashok Nagar District Ranchi- Jharkhand.

.... Respondents

CORAM : HON'BLE THE CHIEF JUSTICE

For the Petitioner	:	Mr. Vikash Pandey, Advocate Ms. Diksha Dwivedi, Advocate
For the Respondents	:	Mr. Srijit Choudhary, Advocate Ms. Tanya Rai, Advocate Mr. Aayush Ojha, Advocate Mr. Chiranjeev Mahto, Advocate

Order No. 04

Dated : 27.02.2026

1. Heard learned counsel for the parties.
2. This application seeks appointment of an Arbitrator on account of disputes arising out of Agreement No. RITES/RPO-KOL/CCL-Magadh/Civil & P Way/PKG-III/2018/500 dated 11.06.2018.
3. The applicant had, by notice dated 05.06.2025, invoked the Arbitration Clause No. 25 in the contract between the parties and sought for the resolution of disputes through arbitration. However, the respondents did not consent for resolution of such disputes through arbitration. Hence, this application seeking appointment of Arbitrator.

4. Mr. Vikas Pandey, the learned counsel for the applicant submitted that the scope of proceedings under Section 11 is extremely limited and is confined to determining the existence of an arbitration agreement. He further submitted that there is no question of unilateral appointment of Arbitrator by the respondent, as held in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (Joint Venture)*, (2025) 4 SCC 641.
5. Mr. Srijit Choudhary, the learned counsel for the respondents, at the outset referred to the statement of objections and reasons of the Arbitration and Conciliation (Amendment) Act, 2019 and submitted that such amendment was introduced to make the arbitration process cost effective, speedy and with minimum Court intervention. He pointed out that Clause 25, which the applicant invokes, requires the contractor to first seek a decision from the Engineer-in-Charge. If dissatisfied with such decision, the contractor, can appeal before the appellate authority specified in Schedule-F. Only if the contractor is still dissatisfied, can request be made to appoint Arbitrator. He submitted that all this process has not been followed by the applicant and, therefore, this application is quite premature and should not be entertained. He submitted that if such application is entertained, then, the object of minimum Court intervention would stand frustrated.
6. The rival contentions now fall for determination.
7. In this case, the existence of the arbitration agreement between the parties cannot be disputed. Clause 25 is an arbitration clause, which is in writing and in fact, signed by both the parties. In the counter filed to oppose appointment of any Arbitrator, there is no dispute raised about

the existence of the arbitration agreement. The dispute is about non-compliance with certain pre-conditions before which, appointment of an Arbitrator could be sought by the applicant.

8. The scope of proceeding under Section 11 of the said Act is limited to examining the existence of an arbitration agreement. Even the scope of such examination is extremely limited. In *Eminent Colonizers Private Limited Vs. Rajasthan Housing Board and Others*, (2026) SCC OnLine SC 148, the Hon'ble Supreme Court, after referring to its decision in re-interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1989, observed as follows:-

23. The scenario would have been totally different if the 2015 (Amendment) Act had applied to the arbitral proceedings. The scope of the inquiry has been clarified in In re Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899⁵, in the following terms:—

“164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing

to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya

Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 in the context of Section 8 and Section 11 of the Arbitration Act.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234].

169. When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional

competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.”

9. Since the existence of an arbitration agreement cannot be disputed in this case and the inquiry is extremely limited, this application must be allowed. Insofar as the objection raised on behalf of the respondents is concerned, the same can always be raised before the Arbitral Tribunal, and the Arbitral Tribunal would be bound to consider the same in accordance with law. However, based on the objections so raised, it would not be appropriate not to appoint any Arbitrator or constitute an Arbitral Tribunal, given the limited scope of enquiry under section 11 of the said Act.
10. Sustenance can be drawn from the decision of the Hon’ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, (2024) 12 SCC 1*** and the order dated 04.02.2026 disposing of **Arbitration Application No. 34 of 2025 (M/s. P.K. Agarwala versus Mecon Limited & Ors)** in support of the above view.
11. The reply on behalf of the respondents does not categorically raise any objection in the context of the powers of the respondents to appoint an Arbitrator of their choice. At least, prima facie, the decision of the Hon’ble Supreme Court, in ***Central Organisation for Railway Electrification*** (supra) would apply. In any event, even this issue is not being decided in the limited scope of inquiry under section 11 of the said Act.
12. Accordingly, **Mr D.G.R. Patnaik, Former Judge of this Court**, residing at 1, Rajendra Nagar, Sakchi, Jamshedpur, 831001, is

appointed as an Arbitrator to adjudicate the disputes between the parties. The appointment is subject to the learned Arbitrator not being subject to any of the disqualifications prescribed under the said Act and issuing a declaration to that effect before he enters upon reference. Learned Arbitrator's fees shall be in terms of the Fourth Schedule to the said Act, and both the parties shall bear such fees in equal proportion.

13. The Learned Arbitrator will endeavour to conclude the arbitration proceedings within the period prescribed under Section 29-A of the said Act.
14. Once again, it is clarified that all contentions of the parties, including the respondents' objections, remain explicitly open for the learned Arbitrator to decide in the first instance.
15. All concerned must act on an authenticated copy of this order.
16. This application is disposed of, in the above terms, without any order for costs.

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

February 27, 2026
Ranjeet / R.Kr.
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