IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No. 41 of 2026
CNR No. ODHC010613372026

(An application under Section 11 (6) of the Arbitration and Conciliation Act, 1996)

Dillip Kumar Dash ……. ***Petitioner***

-Versus-

General Manager, East Coast Railway and another ……. ***Opposite Parties***

Advocate(s) appeared in this case:-

For Petitioner	:	Mr. S.S. Padhy, Advocate
For Opposite Parties	:	Mr. P. K. Parhi, Deputy Solicitor General Mr. S.S. Kashyap, Senior Panel Counsel

CORAM : HON'BLE THE ACTING CHIEF JUSTICE

JUDGMENT
20th November, 2026

B.P. Routray, J.

1. Heard Mr. S.S. Padhi, learned counsel for the Petitioner and Mr. P.K. Parhi, learned Deputy Solicitor General of India along with Mr. S.S. Kashyap, learned Senior Panel Counsel, for Opposite Parties.

2. Present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an

independent and impartial Arbitrator for adjudication of the dispute between the parties arising out of agreement dated 11th November 2020 under Annexure 1.

3. It is submitted on behalf of the Petitioner that as per the contract/agreement at Annexure-1, Clause 63 thereof suggests for conciliation before going for arbitration and Clause 64 enables the adjudication of dispute through arbitration, the conciliation Clause has become redundant and there would not be any bar on the part of the parties for proceeding for arbitration under the provisions of the Arbitration and Conciliation Act, 1996 particularly after 2015 amendment. It is pointed out by Mr. S.S. Padhi, learned counsel for the Petitioner, that pursuant to the letter of Petitioner dated 6th July 2026 raising the dispute, the Opposite Parties have replied requesting the Petitioner to exercise his option for making the appointment of Arbitrator under the revised provisions of Amendment Correction Slip No.10 to the GCC–2022 or earlier provisions of the GCC–2020 with further condition that in case of exercising the option for appointment of Arbitrator under the revised provisions of Amendment Correction Slip No.10 to GCC–2022, the Petitioner has to enter into a supplementary agreement at the first instance, and in the event the

Petitioner opts for arbitration under the earlier provisions of GCC–2020, option with regard to waiving off applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996 is to be exercised by him to process the case further.

4. Mr. S.S. Padhy, learned counsel for the Petitioner submits that such condition is not acceptable to the Petitioner and there would not be any impediment to invoke Clause 64 of the GCC in order to raise the dispute to be resolved through arbitration. He relies on the decision of Hon'ble Supreme Court of India in ***Hindustan Construction Company Limited v. Bihar Rajya Pul Nirman Nigam Limited and others, (2026) 3 SCC 264.***

5. The Opposite Parties have filed their counter affidavit. In the counter affidavit at paragraph 5(f), it has been stated as follows:

> " 5. xxx xxx xxx
> (f) That, if the Claimant intended to proceed under the original arbitration agreement, including Clause 64(3)(b) of the GCC, he ought to have approached the General Manager and exercised the appropriate option in accordance with the contractual procedure. Instead, the Claimant has approached this Hon'ble Court seeking appointment of an independent and impartial arbitrator without first following the procedure contemplated under Clause 64(3)(b) of the GCC (Annexure D/1). The present

petition is therefore premature and contrary to the agreed contractual mechanism, and the Claimant has unnecessarily invoked the jurisdiction of this Hon'ble Court without exhausting the procedure prescribed under the contract."

6. Mr. P.K. Parhi, learned Deputy Solicitor General of India, fairly submits on behalf of the Opposite Parties that despite such averments made in the counter affidavit, the Petitioner, in view of the provisions of the Arbitration and Conciliation Act, 1996, cannot be compelled to exercise his option to avail the benefits of arbitration in terms of Clause 64 of the GCC by waiver of the right under Section 12(5) of the Arbitration and Conciliation Act, 1996. He thus renders his 'no objection' for proceeding for adjudication of the dispute by invoking the arbitration clause.

7. Hon'ble Supreme Court of India in ***Hindustan Construction Company Limited*** (supra) has observed as follows:

> **"62.** The legal position is now settled. In *Offshore Infrastructures Ltd.* v. *Bharat Petroleum Corpn. Ltd.* [*Offshore Infrastructures Ltd.* v. *Bharat Petroleum Corpn. Ltd.*, (2025) 14 SCC 739 : 2025 SCC OnLine SC 2147], this Court held that even where a clause contains an otherwise defective unilateral appointment mechanism, the Court may sever the offending portion and exercise its power under Section 11(6) to appoint an independent arbitrator, thereby giving effect to the parties'

genuine intention to arbitrate. The following paragraphs are pertinent in this regard: (SCC paras 18-20)

> "*18*. The respondent contends that once the arbitration clause referred to in the GCC has become obsolete and non-operative, it would render the entire arbitration mechanism non-existent therefore the appellant cannot file an application for appointment of arbitrator.
>
> *19*. We are not persuaded by this submission of the counsel for respondent. *The very existence of the arbitration clause in the GCC referring to all disputes to arbitrator is the core part of contract. Merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referring the dispute for adjudication to arbitrator would be rendered nugatory. The amendment in the statute has been enacted with the legislative intent to enforce neutrality of the arbitrator and bring impartiality in arbitration proceedings by virtue of Section 12(5) of the 1996 Act. It cannot be justified to literally interpret the clause in the contract in a manner or at the cost of the entire arbitration mechanism itself being abandoned.*
>
> *20. The arbitration agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to pursue the intended dispute redressal mechanism of contract. Therefore, it cannot be said that non-operation of arbitration clause in GCC will result into forgoing of entire arbitration mechanism and rendering the appellant disentitled for seeking appointment of arbitrator.* The appellant is, therefore,

entitled to file application under Section 11(6) of the 1996 Act for appointment of arbitrator and thereby the power is vested with the court to appoint an arbitrator upon filing of such application."

The Court further cautioned that refusing to sever such clauses would effectively confer on the dominant party a "nuclear veto" to defeat arbitration altogether a result wholly inconsistent with the pro-arbitration policy of the Act and violative of Article 14.

63. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in *CORE*(2) [*Central Organisation for Railway Electrification* v. *ECI-SPIC-SMO-MCML (JV)*, (2020) 14 SCC 712] , arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

64. The sub-clause in Clause 25 which provides that "if for any reason the matter shall not be referred to arbitration" is vague, uncertain, and arbitrary. The expression "for any reason" confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

65. In light of the above discussion, the following propositions emerge:

(*i*) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(*c*);

(*ii*) Clause 25, in its substantive form, constitutes a valid arbitration agreement;

(*iii*) The unilateral and exclusionary appointment mechanism is void and severable; and

(*iv*) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

66. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside."

8. In the case at hand, it is true that Clause 63 of the GCC has though speaks of the resolution of dispute through conciliation, but the same cannot be treated as a precondition to invoke the arbitration as per Clause 64 of the GCC. The unilateral refusal of Opposite Parties compelling the Petitioner to exercise his option as per the letter of Opposite Parties at Annexure-3 thus cannot prevent the parties for invoking the arbitration clause. Undoubtedly, the power of the Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 to cure the defect and appoint an independent and impartial arbitrator cannot be fettered.

9. In the given circumstances of the present case, as seen from Clause 64 of the GCC, the parties are at liberty to invoke the remedy

of arbitration for adjudication of the dispute and this is also otherwise agreed by Mr. P.K. Parhi, learned Deputy Solicitor General of India for the Opposite Parties.

10. Accordingly, this Court is inclined to allow the prayer of the Petitioner to exercise the jurisdiction under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

11. After hearing both parties and keeping in view the nature of dispute, ***Miss Deepali Mahapatra, Advocate*** of this Court is hereby appointed as sole Arbitrator. She shall enter upon the reference upon communication of this order. The proceedings of arbitration shall take place under the aegis of the High Court of Orissa Arbitration Centre.

12. The arbitration petition is accordingly disposed of. A copy of this order may be communicated to the Arbitrator.

(B.P. Routray)
Acting Chief Justice

S.K. Guin/PA

Signature Not Verified
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Signed by: SUBASH KUMAR GUIN
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 25-Nov-2026 15:28:02