2026:CGHC:15115
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 21 of 2026

Angelique International Limited Hemkunt Tower, 1st Floor, 98, Nehru Place, New Delhi 110019 (Through Its Authorized Signatory Nikhil Kumar, S/o Shri Jagdish Kumar, Aged About 32 Years).

... Applicant

versus

South East Central Railway Through The Chief Electrical Engineer Construction, SECR Head Office, Bilaspur, Chhattisgarh

... Respondent

For Applicant	:	Mr. Rishab Garg, Advocate.
For Respondent	:	Mr. Ramankant Mishra, Deputy Solicitor General.

Hon'ble Mr. Ramesh Sinha, Chief Justice
Order on Board

01.04.2026

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The facts, in brief, as projected by the applicant are that the applicant is a public company duly incorporated under the provisions of the Companies Act, 1956. The applicant is a Project Engineering, Procurement, and Construction (EPC) company engaged in the execution of infrastructure and engineering projects, including but not limited to sectors such as power, water, and railways. The applicant has a pan-India presence and also undertakes projects in various other countries. The respondent is South East Central Railways acting through Chief Electrical Engineer (Construction) South East Central Railway, Bilaspur (C.G), which is one of the 18 railway zones in India. The respondent acting through Chief Electrical Engineer

(Construction) South East Central Railway, Bilaspur (C.G), floated a tender bearing No. E-04/Tender/EL/CON/SECR/BSP/2017 dated 07.03.2017 for "Electrification of 3rd Line between SHINGHPUR-BADHEABARA & MUDARIA TO KERKELI, including modification in yards by 2x25 KV, 50 HZ A.C, Single Phase Over Head Equipment in connection with Anuppur-Katni 3rd line in BSP Division Over SEC Railway". The applicant participated in the said tender and was awarded a tender by the respondent vide issuance of a letter of acceptance bearing No. COA/C/BSP/EL/904/T-478/SPL dated 12.07.2017 for the said work to be completed within 24 months for a total contractual value of Rs. 18,25,19,640/-. Following the issuance of the Letter of Acceptance, a Contract Agreement bearing No. CA No. 19/CEE/CON/SECR/BSP/2017 dated 18.09.2017 was executed between the applicant and respondent thereafter. Further, the relevant provision for the purpose of the present application is at Chapter V Conditions of Prices, and Payment Terms Clause H. Based on these provisions, the applicant is entitled to Price Variation as per the formulae for Price Variation as given in the Annexure to the Payment Terms at Page 63 of the Contract. Based on the above-mentioned reproduction of the relevant Clause 46A.7(Clause 46A.7 of the Special Conditions of Contract) of the Contract, it is amply clear that the calculation of the price variation of Iron and Steel would be determined as per the IEEMA Index for Blooms and Billets, which is the standard practice followed by the Central Organization for Railway Electrification (CORE). In accordance with contractual provisions as mentioned above, the applicant raised the Price Variation Clause Invoice No. 0-17024/PV Bill - 01 for Rs. 53,56,026.00 /- relying upon the indices of Billets for steel items on the ground that Billets were being used to manufacture the steel structure.

3. Mr. Rishab Garg, learned counsel for the applicant submits that the said invoice to the respondent vide its letter No. AIL/O-17024/PV-01/Arbitration dated 13.01.2025, but to no avail, as the said bill has not been paid by the respondent. At this stage, it is pertinent to note that in a similar contract agreement bearing No. 10/CEE/CON/SECR/BSP/2017 dated 26.04.2017, executed between the same parties, an identical dispute arose regarding the applicability of the price variation clause. The said dispute was adjudicated through arbitration proceedings conducted by Hon'ble Justice L.C. Bhadoo (Retd.), who passed a reasoned award in favour of the applicant. He also submits that various material documents to substantiate that the IEEMA Index for Blooms and Billets is the appropriate and applicable index for determining price variation for iron and steel items under the contract. These material documents were relied upon by the arbitrator while passing the award in favour of the applicant. A brief account of the documents and communication which are directly relevant and germane to the present dispute is summarized hereinafter for the kind consideration of this Hon'ble Court. The applicant's letter bearing No. CEX/O-160028/Bill/PVC-01/04 dated 16.05.2018 informed the respondents that the Indian Electrical and Electronics Manufacturers' Association (IEEMA) has been using the Wholesale Price Index (WPI) for Iron & Steel (as per the old base year 1993-94-100) in its Price Variation (PV) circulars for specific products such as Transformers, Switchgear, Instrument Transformers, Rotating Machines, Civil Works and Erection, Surge Arresters, Elevators/Escalators, Insulators, Battery Chargers, and Bus Duets. It was specifically clarified by the applicant that the WPI for "Iron & Steel," which existed in the old base series, no longer exists in the revised base series, and that the said IEEMA circulars are limited to the above-mentioned product categories.

4. Mr. Garg further submits that the applicant further explained that these circulars pertain to WPI indices under the category "Manufacture of Basic

Metals," which applies to products where the ferrous content is minimal and are therefore not applicable to Steel Structures used in Railway Electrification projects. In support of this, the applicant also referred to Railway Board Circular No. 2007/CE-1/CT/18/PT 13 dated 02.05.2014, which explicitly provides that for Steel Structures used in Railway Electrification works, the applicable PVC formula shall be based on IEEMA Price Indices. Respondent No. 3's letter bearing No. CAO/BSP/EL/904/T-467 dated 21.05.2018 seeking clarification from the Deputy Chief Electrical Engineer, Central Organization for Railway Electrification (CORE), Allahabad, regarding the applicability of the IEEMA rate index. CORE's (a specialized unit under the Ministry of Railways, entrusted with carrying out railway electrification works across India) response dated 29.05.2018 (Letter No. ELCORE/OHE/Misc/Part.III) by citing the case of Jalpaiguri, informed Respondent No. 3 that for the calculation of price variation of steel and iron has to be based on IEEMA index for Blooms and Billets. It is stated that CORE affirmed the applicant's position that the IEEMA index for Blooms and Billetsis the appropriate index for price variation in steel and iron components. Further, CORE clarified that there is no provision for applying the RBI WPI index in CORE also shared its earlier letter No. ELCORE/OHE/KBRJL/Gr.150 dated 13.09.2013, issued to the Chief Project Manager, Jalpaiguri, along with annexures specifying that Billets (Light Angles) and Steel Blooms (Heavy Angles), as per IEEMA Circulars, are to be used. Further, the applicant, vide its letter No. CEX/O-16028/Bill/PVC-01/05 dated 11.06.2018 (sent on 13.06.2018), again informed respondent No. 3 that, as per an email confirmation from the Director of IEEMA, it is recommended to use the IEEMA index for Billets/Blooms for iron and steel. The applicant enclosed the said email along with the letter. After taking into account the material produced by the applicant in the above-mentioned Arbitration relating to a similar dispute of a claim of price variation and the applicability of the price variation clause, the Learned Sole Arbitrator, after evaluating all contentions and materials, passed an award dated 15.03.2022 in favour of the applicant, holding that the IEEMA index for Blooms and Billets is applicable.

5. However, the respondent, dissatisfied with the arbitral award dated 15.03.2022, challenged the same under Section 34 of the Arbitration and Conciliation Act, 1996 vide Arbitration MJC No. 06/2024, before the Learned Commercial Court, Naya Raipur, which vide its order dated 08.11.2024, upheld the arbitral award and dismissed the objections of the respondents. In the above-mentioned order dated 08.11.2024, the Learned Commercial Court has categorically held that the IEEMA index for Blooms and Billets was the appropriate price index to be applied for determining price variation for iron and steel under Clause 46A.7 of the contract, and that the respondents were bound by the same. Following the Learned Commercial Court's order dated 08.11.2024, which affirmed the award passed by the Learned Sole Arbitrator in the arbitration relating to the agreement bearing No.10/CEE/CON/SECR/BSP/2017 dated 26.04.2017, the applicant, vide its letter dated 20.11.2024, stated that the arbitral award dated 15.03.2022 has now attained finality, as the challenge to the same has been dismissed by the Learned Commercial Court vide its order dated 08.11.2024. The applicant, vide this letter, requested the respondent to release the payment of the arbitral award along with interest, atotal amount of Rs. 1,40,95,972/-.

6. Mr. Garg also submits that the respondent, being satisfied with the said order of Learned Commercial Court, Naya Raipur, without challenging the same before any Court of law, paid Rs. 1,34,02,621/- on account of payment of deduction from PVC bill along with interest @ 12% per annum from the date of appointment of arbitrator to the applicant and after deducting the TDS, the payment of Rs. 1,34,02,621/- was duly acknowledged by the applicant vide its letter dated 30.12.2024. In addition to the said acknowledgement, the applicant vide the same letter, called upon the respondent to pay for the price variation amount in four other similar contracts, including the contract which is the subject matter of this writ petition, bearing No. 16/CEE/CON/SECR/BSP/2017 04.08.2017,18/CEE/CON/SECR/BSP/2017 dated 18.09.2017 19/CEE/CON/SECR/BSP/2017 dated 18.09.2017 and dated 18.09.2017 28/CEE/CON/SECR/BSP/2017 dated 12.02.2018. The agreement bearing reference 19/CEE/CON/SECR/BSP/2017, dated 18.09.2017, is the subject matter of the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996. Despite the settled position of law as affirmed by the Learned Commercial Court, the respondent vide its letter dated 08.01.2025 refused to apply the same methodology to the issue of price variation in the present contract. The respondent has arbitrarily denied the applicant's legitimate claims for price variation, stating that the said order dated 08.11.2024 was only with respect to a specific contract bearing No. 10/CEE/CON/SECR/BSP/2017 dated 26.04.2017, and as such, the claim of the subject contract cannot be entertained merely based on the said order dated 08.11.2024. In accordance with contractual provisions as mentioned above, the applicant has also raised Price Variation Clause Invoice No. O-17024/PV Bill-01 for Rs. 53,56,026.00/- to the respondent vide its letter no. AIL/O-17024/PV-01/Arbitration dated 13.01.2025, which was of no avail as the respondent failed to pay the same. Following such arbitrary and discriminatory treatment on the part of the respondent, the applicant proceeded to file a Writ Petition before this Hon'ble Court in WPC No. 2496 of 2025 seeking a direction to the respondent to release the amount of Rs. 53,56,026/- towards price variation, in accordance with clause 46.7 of the Contract. This Court vide its order dated 17.06.2025 dismissed the said Writ Petition on the ground that in the presence of an alternative efficacious remedy under Arbitration, the High Court cannot interfere at this stage.

> "8. It is an admitted position as per the learned counsel for the petitioner that the issue involved in the present case is identical to that which already stands decided by the Arbitrator and the same was affirmed by the learned Commercial Court and the petitioner seeks similar relief as has been granted to the petitioner by the Arbitrator as well as the learned Commercial Court. When the petitioner has a remedy to approach the Arbitrator as also the Commercial Court, then there seems to be no reason as to why this Court should intervene in the matter. The petitioner ought to have exhausted the alternate efficacious remedy available to him.
> 9. Considering the matter in its entirely, we do not find any good ground to interfere in the present writ petition. Consequently, this writ petition stands dismissed."

7. Consequently, the applicant pursued the alternative remedy of dispute resolution under the contract and gave a notice dated 27.08.2025 to the respondent demanding reference of the dispute to arbitration. Vide this notice, the applicant expressly stated that the appointment of the arbitrator should comply with the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015, following which no party to the arbitration can unilaterally appoint an arbitrator for the resolution of a dispute. The applicant duly informed the respondent that they are initiating the process of appointment of the arbitrator in accordance with the law. Pursuant to the 2015 amendment to the Arbitration and Conciliation Act, 1996, Section 12(5) was inserted, which mandates that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, their counsel, or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Clause 1 of the Seventh Schedule expressly bars the appointment of any employee, consultant, advisor, or any other person having a past or present relationship with a party as an arbitrator. The aforesaid statutory mandate has been consistently upheld by the Hon'ble Supreme Court in a catena of judgments, including ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377, and ***Perkins Eastman Architects DPC v. HSCC (India) Limited***, (2020) 20 SCC 760, amongst others.

8. Despite the well-established position of law as highlighted in the aforementioned paragraphs, the respondent, in its response dated 03.11.2025 to the applicant's letter demanding reference to arbitration, has completely ignored the statutory bar on the unilateral appointment of arbitrators and has proposed an appointment under Clause 64.3 (a) as per which the General Manager of the Railway shall appoint the arbitrator for the Railway and the applicant is bound to choose their nominee arbitrator from the approved panel arbitrators. Following this, the applicant wrote a reminder letter dated 11.11.2025, objecting to the application of the Advance Correction Slip (ACS) No 10 in GCC - 2022 to a Contract signed under the provisions of GCC-2014 in completely incorrect and arbitrary. It was further stated that the Advance Correction Slip (ACS) No. 10 has a prospective application. Lastly, it was reiterated that the applicant will proceed with the appointment of the Arbitrator in accordance with the law.

9. Subsequently, on 11.12.2025, the respondents issued a reply to the applicant's letter dated 11.11.2025, whereby it was stated that the respondents are well aware of the provisions and the clarifications and have issued the previous communication to inform the applicant of the available provisions and that it is up to the discretion of the applicant to opt for it or not. Since the aforesaid mechanism for appointment of the tribunal is hit by the statutory provisions and the binding precedents, the applicant is now constrained to approach this Court as per the established principles of law under Section 11 of the Arbitration and Conciliation Act, 1996, for the appointment of the Sole Arbitrator to adjudicate and settle the dispute in question.

10. Mr. Ramkant Mishra, learned Deputy Solicitor General, appearing for the respondent, opposes this arbitration request application, however, he submits that the respondent will have no objection if any Arbitrator is appointed by this Hon'ble Court for resolving the dispute that has arisen between the parties.

11. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

12. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice Deepak KumarTiwari, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.

13. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Deepak Kumar Tiwari** a retired Judge of this High Court is appointed to act as the Sole Arbitrator to resolve the dispute involved in this arbitration request between the parties.

14. The Registry is directed to communicate this order to Hon'ble Mr. Justice Deepak Kumar Tiwari in the proper address.

15. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

16. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
Chief Justice

Preeti