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HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 26 of 2026

Angelique International Limited 104-107, 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 495 004

... Respondent

For Applicant	:	Mr. Kartik Kathuriya, Advocate.
For Respondent	:	Mr. Rishabh Dev Singh, Advocate holding the brief of Mr. Ramakant Mishra, Deputy Solicitor General.

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

05.08.2026

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. SECR is headquartered at Bilaspur and comprises the Bilaspur and Nagpur divisions (formerly part of the South Eastern Railway) and the new Raipur division. The respondent, acting through respondent Chief Electrical Engineer (Construction) South East Central Railway, Bilaspur (C.G) floated a tender bearing No. 06/ Tender/EL/Con/SECR/BSP/2017 for dated 13.04.2017 for the Electrification of 3rd Line between AMGAON-GANGAJHARI including modificatio in yards (40 RKM/49 TKM) in Nagpur 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/Con/R/EL/904/T-01/273 dated 08.11.2017 for the said work to be completed within 24 months for a total contractual value of Rs. 18,70,92,261/-. Following the issuance of the Letter of Acceptance, a Contract Agreement bearing No.COA/Con/R/EL/904/T-01/273 dated 08.11.2017. Following the issuance of the Letter of Acceptance, a Contract Agreement bearing No. CA No. 28/CEE/CON/SECR/BSP/2017 dated 12.02.2018 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.O-17030/PVC -01 for Rs. 85,36,919.00 /- relying upon the indices of Billets for the purpose of steel items on the ground that Billets were being used to manufacture the steel structure, which pertains to Iron & Steel. It is stated that the Applicant submitted the said invoice to the respondent No. 3 vide its letter no. CEX/0-17030/24-25/01 dated 13.01.2025, but to no avail, as the said bill has not been paid by the respondent.

3. Mr. Kartik Kathuriya, learned counsel for the applicant submits 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. It is the aforesaid arbitration, the applicant submitted 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 Court: applicant's letter bearing No. CEX/O-160028/Bill/PVC-01/04 dated 16.05.2018 informed the respondent that the Indian Electrical and Electronics Manufacturers' Association (IEEMA) has been using the Wholesale Price Index (WPI) for Iron and 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. 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 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 ease of Jalpaiguri, informed respondent 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 Billets is 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 such cases. 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.

4. Mr. Kathuriya further submits that 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 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, hoiding that the IEEMA index for Blooms and Billets is applicable. 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 respondent. 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 respondent 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, a total amount of Rs. 1,40,95,972/-.

5. Mr. Kathuriya 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 dated 04.08.2017, 18/CEE/CON/SECR/ BSP/2017 dated 18.09.2017, 19/CEE/CON/SECR/BSP/2017 dated 18.09.2017 and 28/CEE/CON/SECR/BSP/2017 dated 12.02.2018. 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 have 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-17030/PVC-01 for Rs. 85,36,919.00/- to the respondent vides its letter No. CEX/0-17030/24-25/01 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. 3383 of 2025 seeking a direction to the respondent to release the amount of Rs. 85,36,919.00/- towards price variation, in accordance with clause 46.7 of the Contract. During the Writ proceeding, the applicant submitted before this Hon'ble Court that an identical petition bearing WPC No. 2946/2025, filed by the applicant, was dismissed on the ground that in the presence of an alternative efficacious remedy under Arbitration and therefore the applicant sought the liberty to withdraw the petition with a liberty to avail the efficacious alternative remedy. The Hon'ble High Court vide its order dated 03.07.2025 dismissed the Writ Petition as withdrawn with the liberty to avail the efficacious alternative remedy

6. Consequently, the applicant pursued the alternative remedy of dispute resolution under the contract and gave a notice dated 22.08.2025 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. Since the respondent failed to respond to the applicant's letter dated 22.08.2025 demanding reference to arbitration, as such, the parties have failed to reach a consensus regarding the appointment of the arbitrator. At this juncture, it is imperative to mention that Clause 64(3) of the contract provides for unilateral appointment of an arbitrator by the Respondent, which is in complete contradiction to Section 12(5) of the Arbitration and Conciliation Act, 1996, as inserted pursuant to the 2015 amendment. The applicant humbly submits that Section 12(5) makes a clear stipulation 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 ***Central Organization for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***, (2024) SCC OnLine SC 3219, where it is held that it is held that the unilateral appointment clauses in public-private contracts, which allow one party to appoint arbitrators without fair consultation, are arbitrary and unconstitutional. Without prejudice to the above-mentioned, it is crucial to note that there is no dispute with respect to the existence of the Arbitration Clause in the contract and therefore, the court is well within its power under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator in the present dispute. In view of the aforementioned position of law, the applicant has expressly informed vide its letter dated 22.08.2025 that on account of such express bar on the unilateral appointment of arbitrator, the applicant shall proceed in accordance with law for the said appointment. Therefore, the applicant has approached this Court 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.

7. Mr. Rishabh Dev Singh, learned counsel holding the brief of Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the respondent, submits that the parties are in consensus that two identical matters between the same parties are already pending before the learned Arbitrator, who was appointed by this Court, namely, Hon'ble Mr. Justice Deepak Kumar Tiwari

(Retd.). He, therefore, prays that the same learned Arbitrator be appointed by this Court to adjudicate the dispute that has arisen between the parties in the present matter as well.

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

9. 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.

10. 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.

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

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

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

Sd/-
(Ramesh Sinha)
Chief Justice

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