



2026:CGHC:23770

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 34 of 2026**

Shree Ganpati Infratech Ff-4, Maruti Business Park G.E. Road, Post And District Raipur Through Its Partner Manoj Kumar Aggarwal S/o Late Motiram Aggarwal, Aged About 48 Years, R/o House No. 48, Near Agrasen Chowk, Nagar Nigam Colony, Raipur C.G., Chhattisgarh.

... Applicant**versus**

1 - South East Central Railway (SECR) Through The Divisional Railway Manager Titli Chowk, Rail Parisar, Bilaspur C.G.

2 – Sr. Devisional Engineer (East) South East Central Railway O/o Sr, Divisional Engineer Co-Ordination, Titlli Chowk, Railway Settlement Bilaspur C.G.

... Respondents

For Applicant : Mr. Varun Sharma, Advocate.

For Respondents : Mr. Ramakant Mishra, Deputy Solicitor General
and Mr. Rishabh Dev Singh, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Order on Board****15.06.2026**

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, is that the applicant is a partnership firm which was awarded the contract vide Contract Agreement No. 48/DEN-

BSP/2019-20 dated 12.09.2019 for (1) construction of 12 units of Type-II and 44 units of Type-III quarters with electrical work at BRJN, (2) construction of 1 unit Type-III quarter with electrical work at Himgir, and (3) augmentation of the running room at BRJN by 5 double-bedded rooms with electrical work, with a contract value of Rs.11,72,56,057/- (Rupees Eleven Crores Seventy-Two Lakhs Fifty-Six Thousand and Fifty-Seven only). The aforesaid contract was executed between the contractor and the Senior Divisional Engineer (East), South East Central Railway, Bilaspur (C.G.), on behalf of the President of India. The Railways made the General Conditions of Contract, 2018 (in short, GCC-2018), applicable to the contract of the petitioner. The aforesaid contract work has been completed by the applicant to the satisfaction of the principal employer, namely the Railways, and a Completion Certificate has been issued in favour of the contractor. The said Completion Certificate specifies that the work was completed in all respects on 31.08.2024 and that the contractor has neither occupied any railway land/property nor has any outstanding claim against the Railways. It is further submitted that the six months' maintenance period of the contract also came to an end on 01.03.2025. The Performance Guarantee of the contractor has also been released by the competent Railway Authority, which establishes that the work was performed by the contractor to the satisfaction of the Principal Employer, SECR.

3. Mr. Varun Sharma, learned counsel for the applicant, submits that the applicant is a Partnership Firm. Vide Partnership Deed dated

01.04.2016, the contractor firm consisted of three partners, namely Shri Manoj Aggarwal, Smt. Suman Aggarwal and Shri Mukesh Aggarwal. Partner No.1, Shri Manoj Aggarwal, has been the main financial as well as working partner, whereas the remaining two partners, namely Shri Mukesh Aggarwal and Smt. Suman Aggarwal, have been partners only. Clause 15 of the Partnership Deed clearly prescribes that the contractor firm shall not stand dissolved on the death or retirement of a partner and that the partnership business shall continue uninterrupted. The partners are also entitled to execute supplementary deeds. Learned counsel submits that Contract Agreement dated 12.09.2019 was executed between the parties making the General Conditions of Contract, 2018 (GCC-2018) applicable. The aforesaid GCC-2018 does not prohibit reconstitution of a partnership firm, nor does it make prior permission of the Railways a prerequisite for any such change. It only speaks about filing of an undertaking under Clause 18.10 after issuance of the Letter of Acceptance (LOA) and before signing of the Contract Agreement. Once the Contract Agreement has been executed, the rights and liabilities of the parties are governed accordingly. It is submitted that the Railways never called upon the contractor to furnish any undertaking under Clause 18.10 of GCC-2018 and are now seeking to penalize the applicant. Learned counsel further submits that after completion of the work, one of the partners, namely Shri Mukesh Aggarwal, started blackmailing and threatening the remaining partners with the intention of extorting money. Consequently, the contractor firm was constrained to

intimate the Railways vide letters dated 15.01.2024, 22.02.2024 and 27.02.2024 regarding the inter se dispute. Such intimation was given in good faith and the performance of the contract was not affected in any manner and the works continued without any obstruction. It is further submitted that the Senior Divisional Engineer (East), although not being the principal, as the contract was not signed by him, by letter dated 04.03.2024 called upon the partners of the contractor firm to confirm the status of the partnership firm and threatened action under the GCC. A small unnumbered portion of Clause 18.10 of GCC-2018, which according to the applicant is not applicable to the firm, was quoted by the said officer so as to create an impression that reconstitution was prohibited, while suppressing the fact that the said GCC provision was not applicable. The contract work and payments of the firm were directed to remain at a standstill. Learned counsel submits that the contractor firm felt arm-twisted and cornered due to stoppage of payments, while Shri Mukesh Aggarwal was simultaneously pressurizing the remaining partners to pay additional amounts. Consequently, the remaining partners were constrained to make payments to Shri Mukesh Aggarwal due to the threatening and misleading letter dated 04.03.2024 issued by the Senior Divisional Engineer (East). Thereafter, by letter dated 20.03.2024, all the partners informed the Railways that the dispute stood settled. Shri Mukesh Aggarwal also specifically addressed a letter dated 22.03.2024 to the Senior Divisional Engineer (East) clarifying that payments could be released to the firm. Upon receipt of the said

communication, the Senior Divisional Engineer (East) released part payment in favour of the applicant firm. It is further submitted that since the work of the firm stood completed and neither the Partnership Deed nor GCC prohibited such action, the remaining partners, with a bona fide intention to protect themselves from any further blackmail, threats or extortion by Shri Mukesh Aggarwal, permitted him to retire from the firm by way of Supplementary Deed dated 01.04.2024 with a specific condition that his retirement would not affect continuance of the firm and that the remaining partners would continue the business of the firm. Learned counsel submits that since the outgoing partner had been able to blackmail and extract money from the firm with the apparent connivance of the Senior Divisional Engineer (East), the applicant firm was once again pressurized by the said official to submit a consent letter dated 31.05.2024. Since the retirement deed clearly stipulated that the outgoing/executed work would continue to be treated as the business of the firm, the outgoing partner also signed the consent letter dated 31.05.2024 and there was no intention on the part of the applicant to derive any wrongful gain.

4. Mr. Sharma further submits that despite submission of the aforesaid letters, consent letter, joint letter and several personal meetings, the outstanding payments were not released by the Railways. Consequently, letters dated 25.11.2024 and 23.12.2024 were submitted by the firm requesting release of outstanding payments. It is further submitted that even the request for final measurement was not responded to and therefore the contractor firm addressed a

specific letter dated 02.01.2025 to the Senior Divisional Engineer (East) seeking final measurement and release of the outstanding dues. Learned counsel submits that despite repeated and legitimate requests, no action was taken and the Senior Divisional Engineer (East) continued to harass the contractor under the guise of futile communications. Consequently, the applicant was constrained to submit a detailed representation dated 21.01.2025 seeking intervention in the interest of justice. It is submitted that after receipt of the said representation, the Senior Divisional Engineer (East), harbouring grievances against the contractor, issued a notice dated 12.02.2025 calling upon the contractor to submit a notarized affidavit answering nine self-incriminating questions, thereby compelling the contractor to succumb to the illegal demands of the outgoing partner, Shri Mukesh Aggarwal. Learned counsel submits that the applicant requested the Senior Divisional Engineer (East) to reconsider the demand for filing such affidavit as the queries raised therein had no relevance to the performance of the contract work by the firm. It is further submitted that issuance of the notice dated 12.02.2025 gave rise to disputes regarding construction, applicability and interpretation of the agreement. Since the applicant was not clear about the applicability of GCC, particularly because the respondent was relying upon provisions of GCC-2022 whereas the contract itself stipulated applicability of GCC-2014/GCC-2018, the applicant vide letter dated 20.02.2025 sought additional information for furnishing an effective reply to the notice dated 12.02.2025. Learned counsel submits that the applicant was

convinced that Respondent No.3 had already made up his mind to punish the applicant firm. Therefore, the applicant invoked the contractual dispute resolution mechanism and approached Respondent No.2, namely the Divisional Railway Manager, Bilaspur, by issuing a Notice of Dispute dated 27.02.2025 seeking amicable resolution of the dispute. It is submitted that vide letter dated 28.02.2025, Respondent No.3 supplied information to the applicant by furnishing a copy of GCC-2022. According to the applicant, the action of the respondent is wholly without jurisdiction since GCC-2022 was not in existence on the date of execution of the contract and, therefore, the prohibition regarding reconstitution of a partnership firm contained therein could not be applied to the applicant. Learned counsel submits that despite the aforesaid position, Respondent No.2 again pressurized the applicant to submit the affidavit and was bent upon penalizing the applicant firm. Consequently, the applicant vide letter dated 05.03.2025 requested Respondent No.2 not to initiate any coercive action in view of the pendency of conciliation proceedings. However, the Senior Divisional Engineer (East), SECR, Bilaspur, acting arbitrarily and high-handedly, issued Order No. SECR/BSP/Engg/W(A)/48/8/SGI/1263 dated 28.03.2025 terminating Contract Agreement No.48 dated 12.09.2019 retrospectively with effect from 31.08.2024. Learned counsel submits that the applicant had already completed the work and had also received the completion certificate and, therefore, no retrospective termination could have been ordered. It is further submitted that although the respondents have referred to

certain letters for forfeiture of amounts payable to the applicant, the said letters were never served upon the applicant.

5. Mr. Sharma also submits that the conduct of the respondents clearly demonstrates that they are seeking to frustrate the claims of the applicant and subject it to hardship, particularly when the arbitral dispute involves monetary claims exceeding Rs.5 Crores. It is submitted that the applicant approached this Court by filing W.P.(C) No.1984/2025 and this Court vide order dated 09.04.2026 disposed of the writ petition granting liberty to the applicant to approach this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. Learned counsel submits that right from the inception the applicant pursued the contractual mechanism for dispute resolution and had already issued a Notice of Dispute dated 27.02.2025 to the respondents. It is further submitted that appointment of an arbitrator is required to be in conformity with the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015, and no party can unilaterally appoint an arbitrator for adjudication of disputes. Since the respondents failed to respond to the applicant's letter dated 27.02.2025 seeking amicable settlement, the parties failed to arrive at any consensus regarding appointment of an arbitrator. Learned counsel submits that Clause 64(3) of the contract, which provides for unilateral appointment of an arbitrator by the respondent, is contrary to Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule inserted by the 2015 Amendment Act. Section 12(5) specifically stipulates that notwithstanding any prior

agreement to the contrary, any person whose relationship with the parties, their counsel or the subject matter of dispute falls within any of the categories enumerated in the Seventh Schedule shall be ineligible to act as an arbitrator. Clause 1 of the Seventh Schedule expressly disqualifies any employee, consultant, advisor or any other person having a past or present business relationship with a party from acting as an arbitrator. Learned counsel places reliance upon the judgment of the Hon'ble Supreme Court in ***Central Organization for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***, reported in (2025) 4 SCC 641, wherein it has been held that unilateral appointment clauses in public-private contracts enabling one party to appoint arbitrators without fair consultation are arbitrary and unconstitutional. It is further submitted that there is no dispute regarding the existence of the arbitration clause in the contract and, therefore, this Court is fully empowered to exercise jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. Accordingly, the applicant has approached this Court seeking appointment of a Sole Arbitrator for adjudication and settlement of the disputes between the parties.

6. Learned counsel for the respondents, opposes this arbitration request application, however they submit that the respondents shall have no objection if this Court appoints any Arbitrator for resolving the dispute between the parties.
7. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

8. 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 Shri Justice Arvind Kumar Verma, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.
9. In view of the above consensus between the learned counsel for the parties, **Hon'ble Shri Justice Arvind Kumar Verma** 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.
10. The Registry is directed to communicate this order to Hon'ble Shri Justice Arvind Kumar Verma in the proper address.
11. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
12. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
Chief Justice

Rahul Dewangan