



2026:CGHC:23251

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 35 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.,

... Applicant**versus**

1. South East Central Railway (SECR) Through The Divisional Railway Manager Titli Chowk, Rail Parisar, Bilaspur, C.G.
2. Sr. Divisional Engineer (East) South East Central Railway O/o Sr. Divisional Engineer (Co-Ordination), Titli Chowk, Railway Settlement, Bilaspur C.G.

... Respondent(s)

For Applicant	: Mr. Varun Sharma, Advocate.
For Respondent(s)	: Mr. Ramakant Mishra, Deputy Solicitor General and Mr. Rishabh Dev Singh, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Order on Board****15.05.2026**

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 that has been awarded the contract vide Agreement No. 44/DEN-BSP/17-18 Date 24.08.2017- Construction of new quarters (i) 15 units type-II, 15 units type-III & 01 unit type-IV with electrical work (ii) 02 units type-II (iii) 02

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units transit accommodation (iv) 08 units type-III (v) 08 units type-II (vi) 08 units type-II with electrical works at BRJN. The Contract Value of this contract is Rs.5,48,67,031.00/-. The aforesaid Contract has been executed between the contractor with Senior Divisional Engineer (East), South East Central Railway, Bilaspur (C.G.) on behalf of the President of India. The railways have made the General Conditions of Contract 2014 (in short, the GCC2014) applicable on the contract of the applicant. The aforesaid contract work has been completed by the applicant to the satisfaction of the principal employer Railways. The completion certificate has been issued in favour of the contractor. The aforesaid completion certificate specifies that the work is completed in all respect on 15/12/2022 and the contractor has not occupied any railway land/property and having no outstanding claims on railway. The 6 months maintenance period of this contract has also ended in the year 2023 itself. The Performance Guarantee of the contractor has also been released by the Competent Railway Authority which establishes the fact that the work has been performed by the contractor to the satisfaction of the Principal-SECR.

3. Mr. Varun Sharma, learned counsel for the applicant submits that the applicant is a Partnership Firm Vide the Partnership Deed dated 01/04/2016 the contractor's firm consisted of three partners namely Shri Manoj Aggarwal, Smt. Suman Aggarwal and Shri Mukesh Aggarwal. The Partner No.1 (Manoj Aggarwal) has been the main Financial as well as the Working Partner. The remaining two partners namely Mukesh Aggarwal and Smt. Suman Aggarwal have been the partners only. Clause 15 of the Partnership Deed clearly prescribes that the contractor firm shall not stand dissolved on death or retirement of a Partner and the Partnership Business will continue uninterrupted. The partners are entitled to execute

supplementary deeds also. The contract agreement dated 24/08/2017 was executed between the parties making the Special General Conditions of Contract, 2014 (in short the GCC 2014) applicable between the parties. The aforesaid GCC-2014 does not prohibit any changes in the Partnership Firm. Neither there is any requirement of taking prior permission from the Railways in the event any changes are necessitated. After the completion of the work in the year 2022 and the maintenance period one of the partner of the contractor firm namely Mukesh Aggarwal started blackmailing and threatening the remaining contractors with a bad intention of extorting money from the partners the contractor firm was constrained to intimate the Railway vide letters dated 15/01/2024, 22/02/2024 and 27/02/2024 regarding the inter se dispute. The above intimation of dispute was made in good faith and the performance of contract was not affected in any manner. The works continued without any obstruction. Sr. Divisional Engineer (East) although not being the Principal (as the contract was not signed by him) took the contractor firm to task and by writing a letter dated 04/03/2024 asked the partners of the contractor to confirm status of the Partnership firm threatening action under the GCC. The small unnumbered portion of Clause 18.10 of the GCC 2018 (which is not applicable on the applicant firm) was quoted by the aforesaid officer giving the impression as if the reconstitution is prohibited but the fact that the aforesaid GCC is not applicable has been suppressed by the aforesaid officer. The contract work and payments of the firm were directed to be stand still. The contractor firm felt arm-twisted and cornered due to stoppage of payment and the partner Shri Mukesh Aggarwal was pressurizing the remaining partners to cough up more money. The remaining partners of the firm were constrained to make payments to the aforesaid partner Mukesh Agrawal due to the aforesaid

threatening and misleading letter dated 04/03/2024 issued by the Sr. Divisional Engineer (East). Subsequently, the letter dated 20/03/2024 was submitted by all the partners informing the railways that the dispute between them stands settled. The partner Mukesh Agrawal also specifically wrote a letter to the Sr. Divisional Engineer (East) to satisfy him that the payments can be released to the firm. This letter has been submitted on 22/03/2024 two days after the submission of joint letter by the partners. After receiving the aforesaid letter the Sr. Divisional Engineer (East) released part payment in favour of the applicant firm. Since the work of the firm was completed and there was nothing in the Partnership Deed or the GCC prohibiting the same, the remaining partners of the applicant firm with a bonafide intention to protect any further blackmailing, threatening or extortion by the Partner Mukesh Agrawal he was allowed to retire from the firm by way of supplementary deed dated 01/04/2024 with a specific condition that his retirement would not affect the continuance of the firm and the remaining partners shall continue the business of the firm. Since the outgoing partner was able to blackmail and extract money from the firm with the apparent connivance with the Sr. Divisional Engineer (East) once again on the pressure of the aforesaid official the applicant firm was pressurized to submit a consent letter dated 31/05/2024. Since the retirement deed of the outgoing partner clearly stipulated that the outgoing/executed work of the Firm shall be treated as business of the firm therefore the outgoing partner has also signed the consent letter dated 31/05/2024 and there is no intention of any wrongful gain by the applicant.

4. Mr. Sharma further submits that since despite submission of the letter, consent letter, joint letter and several meetings in person the remaining outstanding payments were not made to the applicant firm the letters dated 25/11/2024 and 23/12/2024 were submitted by the Firm requesting

outstanding payments. The request for final measurement was also not responded to by the Railways the contractor firm has written a specific letter dated 02/01/2025 to the Senior Divisional Engineer (East) for final measurement and release of outstanding payment. Since the legitimate, genuine and rightful requests of the contractor have fallen in the deaf ears and the Sr. Divisional Engineer (East) has only kept on extorting the contractor in the garb of futile communications. The contractor was constrained to approach your goodself by way of detailed representation dated 21/01/2025 requesting for intervention in the interest of justice. After the submission of representation the Sr. Divisional Engineer (East) appears to have holding grudges against the contractor and has issued the notice dated 12/02/2025 threatening the contractor to file notarized affidavit answering self incriminating 09 questions clearly threatening the contractor to succumb to the illegal demands of the outgoing partner Mukesh Agrawal. The applicant has requested the Sr. Divisional Engineer (East) to reconsider the demand of filing affidavit to the queries that do not have any relevance to the performance of the work by the contractor firm. Due to the issuance of the aforesaid notice dated 12/02/2025 the dispute with regard to the construction, applicability and interpretation of the Agreement arose. Since the applicant was not clear as to the applicability of GCC as the respondent has quoted the provisions of the GCC 2022 whereas the contract clearly mentioned that the GCC 2014 is applicable therefore the applicant vide letter dated 20/02/2025 requested for providing additional information to reply to the notice dated 12/02/2025. Since the applicant was clear that the respondent has already made up his mind to punish the applicant firm. The applicant firm invoked the contractual remedy and approached respondent No.2/Divisional Railway Manager, Bilaspur to amicably resolve the issue. Vide the letter dated

28/02/2025 the respondent has supplied the information to the applicant by supplying a copy of GCC, 2022 to the applicant. Thus, the action of the respondent is clearly without jurisdiction because the GCC 2022 is not applicable on the applicant as the same was not in existence on the date of contract agreement. The prohibition contained in the GCC2022 with regard to reconstitution of partnership firm cannot be made applicable on the applicant firm. Since with the aforesaid letter dated 28/02/2025 respondent No.2 again pressurized the applicant firm to submit affidavit and respondent No.2 was bent upon to punish the applicant firm. The applicant vide letter dated 05/03/2025 requested respondent No.2 not to initiate any action as the conciliation proceedings are pending. Thereafter, the respondent Sr. Divisional Engineer (East), SECR, Bilaspur showing his high headed and arbitrary action has issued the Order No. SECR/ BSP/ Engg/W(A)/ 44/17-18/SGI/403 dated 28/03/2025 and has chosen to terminate the contract Agreement No. 44/DEN-BSP/17-18 dated 24/08/2027 with retrospective effect dated 15/12/2022. The applicant has already completed the work and has received the work completion certificate also. No retrospective termination can be done. The respondent has mentioned the letters to forfeit the amounts of the applicant those letters were never served on the applicant. Thus it is obvious that the respondent concern by showing it's inertness towards the claim of the applicant is trying to frustrate hardships as the arbitral dispute involves monetary claim for more than 5 Crores.

5. Mr. Verma also submits that the applicant approached this Hon'ble Court by way of filing writ petition vide W.P.(C) No. 2050/2025. This Hon'ble Court vide order dated 09/04/2026 has disposed off the writ petition granting liberty to the applicant to approach this Hon'ble Court under the provisions of 11(6) of the Arbitration and Conciliation Act, 1996. The

applicant from the starting pursued the alternative remedy of dispute resolution under the contract and gave a notice dated 27/02/2025 to the respondent. It is respectfully submitted 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. Since the respondent failed to respond to the applicant's letter dated 27.02.2025 demanding amicable settlement, 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, 8 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) (2025) 4 SCC 641***, 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. 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.

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**

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