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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 188/2026**

**M/S NRP PROJECTS PRIVATE LIMITED** .....Petitioner

Through: Mr. Manoj Menon, Mr. Manu Seshadri, Mr. Sahil Manganani, Ms. Prachi Jain & Mr. Faraz Ahmad Khan, Advs.

versus

**M/S GAIL (INDIA) LIMITED** .....Respondent

Through: Mr. Vikas Gupta, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

**ORDER**

**06.05.2026**

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1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an Arbitrator.
2. The respondent/GAIL India Limited, issued a Notice Inviting Tender (NIT) on 24.09.2020. The petitioner was the successful bidder and furnished a performance bank guarantee. The contract was formally executed between the parties to the *lis* on 25.01.2021. The petitioner informed the respondent on 24.09.2021 about additional work due to hard rock strata and submitted the additional expenditure along with the rate analysis.
- 2.1 The execution of the work was completed on 18.11.2021. There was a dispute between the parties with regard to the additional payment made for extra work done. The petitioner submitted the final bill on 31.03.2023. The payment of the final bill was restricted by the respondent. On failure to



make the balance payment the petitioner on 27.03.2025, issued a notice under Section 21 of the Act invoking arbitration under Clause 59 of the Special Conditions of Contract (for short 'SCC').

3. Learned counsel for the petitioner contends that the extra work done is admitted by the respondent and the Engineer-in-Charge (for short 'EIC') has issued partial payment for the additional work done but grievance of the petitioner still survives. Reliance is placed on Clause 59 of the SCC providing for appointment of an Arbitrator.

3.1 Reliance is placed upon the decision of the Supreme Court in the case of **ABS Marine Services v. Andaman & Nicobar Administration**, 2026 SCC OnLine SC 460 to contend that the finality clause shall not debar the remedy available either before the Court or the Arbitrator.

4. *Per contra*, the decision of the EIC on additional payment is final and cannot be the subject matter of arbitration and relies upon Sub-Clause 2.6(c) of Clause 44 of the Instructions to Bidders (for short 'ITB') dealing with the Excepted matters.

4.1 Reliance is placed on Clause 21 of the General Conditions of Contract (hereinafter referred to as 'GCC') to contend that the ITB are higher in priority than the SCC and consequently, the decision of EIC is final and an Arbitrator cannot be appointed.

5. Before proceeding further, it would be apposite to quote Clause 59 of the SCC, the relevant part of Clause 44 of the ITB and Clause 21 of the GCC.

#### **“59. ARBITRATION**

59.1 Clause No.107.0 of GCC pertaining to Arbitration shall be replaced by the following:-



59.1.1 All disputes, controversies, or claims between the parties (except in matters where the decision of the Engineer-in-Charge is deemed to be final and binding) which cannot be mutually resolved within a reasonable time shall be referred to Arbitration by sole arbitrator. The Employer/Consultant (GAIL) shall suggest a panel of three independent and distinguished persons to the other party (Bidder/Contractor/ Supplier/Buyer as the case may be) to select any one among them to act as the sole Arbitrator.

59.1.3 In the event of failure of the other party to select the sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole Arbitrator by the other party shall stand forfeited and the Employer/Consultant shall have discretion to proceed with the appointment of the sole Arbitrator. The decision of the Employer/Consultant on the appointment of Sole Arbitrator shall be final and binding on the parties.

59.1.4 The award of the Sole Arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by the Parties. The arbitration proceeding shall be in English language, and the venue shall be at New Delhi, India.

59.1.5 Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act, 1996 and the rules framed there under shall be applicable.

59.1.6 All matters relating to this contract are subject to the exclusive jurisdiction of the Courts situated in the State of Delhi (India).

59.1.7 Bidders/ Supplier/ Contractors may please note that the Arbitration & Conciliation Act, 1996 was enacted by the Indian Parliament and is based on United Nations Commission on International Trade Law (UNCITRAL, model law), which were prepared after extensive consultation with Arbitral Institutions and centres of International Commercial Arbitration. The United Nations General Assembly vide resolution 31/98 adopted the UNCITRAL Arbitration rules on 15 December 1976.”



#### **“44. DISPUTE RESOLUTION MECHANISM**

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##### **2.6 List of Excepted matters:**

- a) Dispute(s)/issue(s) involving claims below Rs 25 lakhs and above Rs 25 crores.
- b) Dispute(s)/issue(s) relating to indulgence of Contractor/Vendor/Bidder in corrupt/fraudulent/collusive/coercive practices and/or the same is under investigation by CBI or Vigilance or any other investigating agency or Government.
- c) Dispute(s)/issue(s) wherein the decision of Engineer-In-Charge/owner/GAIL has been made final and binding in terms of the Contract....”

#### **“21. Priority of Contract Documents**

21.1 Except if and the extent otherwise provided by the Contract, the provisions of the General Conditions of Contract and Special Conditions shall prevail over those of any other documents forming part of the CONTRACT. Several documents forming the CONTRACT are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the ENGINEER-IN-CHARGE who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows :

- 1) The Contract Agreement ;
- 2) The Letter of Acceptance;
- 3) The (Instructions to Bidders)ITB;
- 4) Special Conditions of Contract (SCC);
- 5) General Conditions of Contract (GCC)
- 6) Any other document forming part of the Contract....”

6. The scope of the reference court under Section 11 of the Act is well defined. The existence of an arbitration clause and a *prima facie* dispute is to



be seen and the rest of the issues are to be considered by Arbitrator.

7. There is no issue involved that there is a dispute between the parties with regard to the payment to be made for the additional work. It is also not disputed that the EIC has released partial payment for the additional work done which itself indicates the additional work was done by the petitioner.

8. The reliance of learned counsel for the respondent on Sub-Clause 2.6(c) of Clause 44 of the ITB and Clause 21 of the GCC is of no avail at this stage. The existence of arbitration clause is not in issue. The objection raised is that the order of the EIC cannot be called for in the arbitration. The Supreme Court in **ABS Marine Services** (supra), while dealing with a Clause wherein finality was agreed between the parties to an action taken for recovery of the differential amount, held as under: -

“22. However, what is contended by the respondent is that, in Clause 3.20, the administration's decision was to be final and cannot be challenged in any court of law and there shall be no arbitration proceedings also.

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34. The sequitur of what has been discussed hereinabove leads to the sole irresistible conclusion that one party to a contract cannot decide whether the other party was in wilful breach or has committed neglect, when liability by the other party is disputed. Not just the weighty precedents, but even plain common sense dictates that Clause 3.20 cannot be so construed as to let one party to a dispute decide whether the other party is in breach. The further contention that such a decision by the administration even on the liability cannot be called in question in any court of law or before the arbitrator is opposed to all canons of the rule of law.

35. All that the Clause 3.20 means is that in a given case where the manning agent does not dispute a wilful act on their part or neglect on their part which has resulted in financial loss the administration may quantify and recover



the amount from the manning agent. It is this decision (in an admitted scenario vis-à-vis liability of the manning agent) on the quantification that is put beyond the realm of adjudication. We have serious reservations even here on denying access to courts of law on the grievance about wrongful quantification. However, since the issue does not directly arise here, we refrain from commenting on the same.

36. The further contention that even if Clause 3.20 is contrary to law, the arbitrator could not have declared its invalidity and it is for the parties to move the Court for appropriate relief need not detain us any further. We have construed the clause to mean that it does not foreclose legal remedies before the arbitrator under Clause 3.22, where the manning agent disputes the liability and contends that there was neither wilfulness nor neglect on their part.

37. As the Clause stands what can at best be said to be an “excepted matter” from the arbitration are only those cases where a manning agent admits liability and wants to question the quantum fixed by the administration. That situation does not obtain here. Hence, we reject the contention of the respondent that the arbitrator entered into the arena of an “excepted matter”.

38. A close reading of Clause 3.20 reveals an interesting aspect. Even on the aspect of quantification in cases where liability is admitted by the agent, where the administration is not able to fully recover, they have reserved for themselves the right to initiate proceedings for recovery of the differential amount. To say the least, this is grossly discriminatory. It is high time that clauses of these types are not incorporated in contracts between a private party on the one hand and the State and its instrumentalities on the other, **foreclosing even redress through Courts of law**. Matters may be ‘excepted’ from arbitration, for that is a well-recognized concept, but a vacuum in legal remedies cannot result. ‘Except’ matters one may but ‘Exclude’ justice, one cannot.”

9. *Prima facie* there is an arbitrable dispute between the parties. Clause



59 of the SCC provides for dispute resolution through arbitration. The arbitrator is bestowed with the power by the statute to decide his own jurisdiction. The Supreme Court in **Adavya Projects Private Limited v. Vishal Structurals Private Limited & Ors.**, 2025 SCC OnLine SC 806 held as under:

“24. As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 ACA. Section 16 embodies the doctrine of *kompetenz-kompetenz* i.e., that the Arbitral Tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referable to arbitration under the agreement. Considering that the Arbitral Tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement.”

10. Accordingly, the petition is allowed by appointing Mr. Justice (Retd.) Attau Rahman Masoodi, (Mobile No.: 9918888857) as the Sole Arbitrator for adjudication of the disputes which have arisen between the parties.

11. The fees of the learned Arbitrator will be governed by Schedule IV of the Act. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

12. It is made clear that this Court has not expressed opinion on the merits of the issues or rival claims of the parties and it will be open for the parties to raise all issues before the learned Arbitrator. Needless to say the observations made herein are only for deciding Section 11(6) and learned



Arbitrator shall decide the issues without being influenced by this order.

13. A copy of this order be forwarded to the learned Arbitrator for information.

**AVNEESH JHINGAN, J**

**MAY 6, 2026**

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