



2026:DHC:1580



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

Date of decision: 20.02.2026

+ ARB.P. 254/2026, I.A. 3470/2026 (For Exemption) & I.A. 3471/2026 (For Exemption)

MIS H.R. CONSTRUCTION PRIVATE LIMITED,

.....Petitioner

Through: Mr.Fahim A. Khan, Mr Mohd
Yousuf Ali and Mr. Tabish
Kamal, Advocates

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED (NHIDCL),

.....Respondent

Through: Mr. Balendu Shekhar,
Ms.Tanisha Samanta, Mr.
Krishna Chaitanya, Mr.
Rajkumar Maurya and Mr.
Divyansh Singh Dev,
Advocates through vc

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition under Section 11(6) of the **Arbitration and Conciliation Act, 1996**¹, seeks the appointment of an Arbitrator to adjudicate upon the disputes arising out of the **Contract Agreement dated 24.03.2021**².

¹ Act

² Agreement



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2. Learned counsel for the Respondent, at the very outset, raises a preliminary objection on the maintainability of the present Petition and draws the attention of this Court to the Notice invoking arbitration dated 28.11.2025.

3. He submits that the present Notice invoking arbitration, as per the terms of Section 21 of the Act read with Clause 26.3 of the Agreement, has not been addressed to the Respondent against whom the reliefs are stated to be sought and thus, the present Petition is not maintainable.

4. A perusal of the Notice dated 28.11.2025 shows that the same has been addressed to the Director General, Ministry of Road Transport and Highways and not the Respondent - National Highways And Infrastructure Development Corporation Limited (NHIDCL).

5. He also draws the attention of this Court to the Contract Agreement entered as between the parties and specifically to the Clause 27.13 of the Agreement, which states that any Notice which has to be given to the Respondent Authority has to be addressed to the Managing Director of the Respondent Authority.

6. Learned counsel appearing for the Petitioner does not controvert the submissions advanced by the learned counsel for the Respondent.

7. At this juncture, this Court deems it appropriate to advert to Section 21 of the Act, which reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

8. This Court is also guided by the Judgment of this Court in



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*Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*³, wherein the Court clarified that service of a notice under Section 21 of the Act upon the non-claimant/respondent is mandatory, unless expressly waived by agreement, as it is the foundational step that validly commences arbitral proceedings. Such service ensures that the non-claimant is informed of the disputes sought to be referred to arbitration, is given an opportunity to accept or contest claims, raise objections, including limitation or legal bars, propose counterclaims, and participate in the agreed procedure for appointment of the arbitrator, including objecting to any proposed arbitrator's ineligibility.

9. In the said judgment, the Court further held that without proper service of this notice on the non-claimant, there can be no consensus on the reference or appointment process, no trigger for court intervention under Section 11, and any arbitration commenced unilaterally would be contrary to principles of consent and natural justice, rendering the proceedings legally unsustainable. The relevant extract of the aforementioned judgement read as under:

“Is the notice under Section 21 mandatory?”

23. While the above ground is by itself sufficient to invalidate the impugned Award, the Court proposes to also examine the next ground whether the Respondent could have, without invoking the arbitration clause and issuing a notice to the Petitioner under Section 21 of the Act filed claims directly before an Arbitrator appointed unilaterally by it?

24. Section 21 of the Act reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on

³ 2017 SCC OnLine Del 7228



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which a request for that dispute to be referred to arbitration is received by the respondent.”

25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be ‘disqualified’ to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of Section 11(6) of the Act, without the notice under Section 21 of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under Section 11 of the Act is such failure by one party to respond.

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29. of course, as noticed earlier, parties may agree to waive the requirement of such notice under Section 21. However, in the absence of such express waiver, the provision must be given full effect to. The legislature should not be presumed to have inserted a provision that serves a limited purpose of only determining, for the purposes of limitation, when arbitration proceedings commenced. For a moment, even assuming that the provision serves only that purpose viz. fixing the date of commencement of arbitration proceedings for the purpose of Section 43(1) of the Act, how is such date of commencement to be fixed if the notice under Section 21 is not issued? The provision talks of the 'Respondent' receiving a notice containing a request for the dispute "to be referred to arbitration". Those words have been carefully chosen. They indicate an event that is yet to happen viz. the reference of the disputes to arbitration. By overlooking this important step, and straightaway filing claims before an arbitrator appointed by it, a party would be violating the requirement of Section 21, thus frustrating an important element of the parties consenting to the appointment of an arbitrator.

30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law."

(emphasis supplied)

10. In view of the foregoing and upon perusal of the relevant material placed on record, including the notice issued under Section 21 of the Act and the Agreement, this Court finds merit in the objection raised by the learned counsel for the Respondent, particularly in light of the admitted position emerging from the Section 21 notice.

11. In view thereof, the present Petition, along with pending

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application(s), is dismissed.

12. It is clarified that the dismissal of the present Petition does not preclude the Petitioner from taking such steps as are available to it under law.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 20, 2026/rk/va/sg

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