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

\# **CNR No. DLHC010049152026**

\+ ARB.P. 269/2026

M/S ASIAN CONSTRUCTION COMPANY .....Petitioner

Through: Mr. Kunwar Chandresh, Ms. Poonam Prasad, Mr. Dalup Kumar Sah, Mr. Divyansh Singh and Mr. Raj Tiwari, Advocates.

versus

RITES LIMITED .....Respondent

Through: Mr. Vineet Malik and Mr. Akash Ahlawat, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 09.10.2026

1. By way of this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties, pursuant to a Letter of Acceptance dated 19.10.2016 for "*Construction of Auditorium at NASC Complex, Pusa, New Delhi, Balance Work (Package I)*" [hereinafter, "the Agreement"].

2. I have heard Mr. Kunwar Chandresh, learned counsel for the petitioner, and Mr. Akash Ahlawat, learned counsel for the respondent.

3. Mr. Ahlawat has handed over a copy of the reply to the petition, which is taken on record.

4. The Agreement is admittedly subject to a dispute resolution clause

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[Clause 25 of the General Conditions of Contract], which provides for settlement of disputes by the Engineer-in-Charge of the project with successive escalation to the Appellate Authority, and then to the Appointing Authority for appointment of an arbitrator.

5. It is the petitioner's case that, disputes having arisen under the Agreement, it issued a letter to the Engineer-in-Charge on 30.05.2024 [Document 6 annexed to the petition] raising various claims and seeking settlement. As the claims were not resolved within the contractual period of 30 days, the petitioner approached the Appellate Authority [being SBU Head, RITES Limited] *vide* letters dated 10.08.2024 and 14.08.2024 [Documents 7 and 8 annexed to the petition]. After waiting for more than the contractual period of 30 days, the petitioner addressed a communication dated 28.11.2024 to the Regional Head (B&A) of RITES Limited, being the Appointing Authority, seeking appointment of a sole arbitrator [Document 9 annexed to the petition]. As the Appointing Authority has failed to act, the petitioner has approached this Court.

6. The principal argument of Mr. Ahlawat was that the petitioner has failed to exhaust the pre-arbitral provisions of the Agreement. The relevant extracts of Clause 25 read as follows:

> "*CLAUSE 25*
> *Settlement of Disputes & Arbitration*
> *xxx* *xxx* *xxx*
> *(1) If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or disputes any drawings, record or decision given in writing by the Engineer on any matter in connection with or arising out of the Contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Engineer-in-Charge in writing for written instruction or decision. Thereupon, the Engineer-in-Charge shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter.*

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If the Engineer-in-Charge fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the Engineer-in-Charge, the Contractor may, within 15 days of the receipt of the Engineer-in- Charge decision, appeal to the Appellate Authority specified in Schedule 'F' who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Appellate Authority shall give his decision within 30 days of receipt of Contractor's appeal. If the Contractor is dissatisfied with this decision, the Contractor shall within a period of 30 days from receipt of the decision, give notice to the Appointing Authority specified in Schedule 'F' for appointment of arbitrator
failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator."

7. The respondent has not raised any factual argument to controvert the record annexed to the petition. As noted hereinabove, the record reveals that the petitioner had approached the Engineer-in-Chief on 30.05.2024, and thereafter approached the Appellate Authority on 10.08.2024 and 14.08.2024. The invocation of arbitration on 28.11.2024 was thus after the lapse of the contractual period, and cannot be said to have been pre-mature. This argument is, therefore, rejected.

8. Mr. Ahlawat's second argument is that the Agreement was signed by the respondent on behalf of the Indian Council of Agricultural Research, which is a necessary party to the arbitral proceedings. However, this is an argument which the respondent may raise before the Arbitrator, and does not require conclusive adjudication in the present application under Section 11 of the Act. The petitioner is, therefore, entitled to appointment of an arbitrator.

9. Learned counsel for the parties agree that the disputes will be referred to a sole arbitrator under the aegis of the Delhi International Arbitration Centre ["DIAC"]. They request that the arbitration may be

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entrusted to a technical person, as it involves construction related disputes.

10. Having regard to the aforesaid, the petition is disposed of with the following directions:

a. Mr. Pradeep Kumar Gupta, former Special Director General, CPWD [Tel: 9971491696] is appointed as the sole arbitrator to adjudicate the disputes between the parties arising out of the Letter of Acceptance dated 19.10.2016.

b. The arbitration will be held under the aegis of DIAC, and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

c. The learned Arbitrator is requested to furnish the requisite declaration under Section 12 of the Act, prior to entering upon the reference.

11. The petition is disposed of in terms of the aforesaid.

12. Needless to say, all rights and contentions of the parties, including as to arbitrability and maintainability of the claims, and on merits, are left open for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

OCTOBER 9, 2026
'PV'/KA/

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