2026:DHC:3629

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

Date of decision: 23rd APRIL, 2026

IN THE MATTER OF:

\+ **ARB.P. 733/2026**

M/S PANCHDEEP CONSTRUCTIONS LTD .....Petitioner

Through: Mr Avra Majumdar, Mr Supratik Sarkar, Advocates

versus

HINDUSTAN PREFAB LTD & ANR. .....Respondents

Through: Mr. Gaurav Gupta, Mr. Sarvesh Mehra, Ms. Shambhavi Khare, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 11118/2026 (Exemption)

Allowed, subject to all just exceptions.

ARB.P. 733/2026

1. The instant Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as* "**the Act**") by the Petitioner against the Respondents seeking appointment of a sole arbitrator for adjudication of the disputes arising out of an Agreement dated 06.10.2016 for construction of the Post-Doctoral Students Accommodation at IIT, Kharagpur ("**Agreement**").

2. Shorn of unnecessary details, the facts, as stated in the Petition are as follows:

a) It is stated that on 09.05.2016, the Respondent No.1 floated a tender for construction of Post-Doctoral Students Accommodation at IIT, Kharagpur *vide* NIT No.HPL/DGM/TC/ITK/2016-17/08. It is stated that the Petitioner participated in the aforesaid tender and emerged as the successful bidder at the quoted amount of Rs.14,87,70,294/- inclusive of all taxes but excluding service tax and as per terms & conditions of NIT and tender documents.

b) Thereafter, a Letter of Intent ("**LOI**") was issued by the Respondent No.1 in favour of the Petitioner through letter No.HPL/DGM(C)/TC/Award/2016-17/13/446 dated 20.06.2016, and the same was accepted by the Petitioner through a letter dated 23.06.2016.

c) Pursuant thereto, the Petitioner and the Respondent No.1 signed an Agreement dated 06.10.2016.

d) It is stated that the Petitioner raised Running Account ("**RA**") bills from time to time for part completion of the work as per the joint measurement, and the said bills were duly accepted by the Respondent No.1.

e) It is stated that the service tax of 6% was applicable to the RA bills till 30.06.2017. It is stated that the Respondent No.1 made a payment of Rs.2,05,56,499/- towards the first 3 RA bills to the Petitioner. It is further stated that the Respondent No.1 failed to make the payment of applicable service tax of 6% amounting to Rs.12,33,386/- on the amount duly paid by them.

f) It is stated that pursuant to the Central Goods and Services Tax Act, 2017 coming into force on 01.07.2017 *vide* the Government of India Notification No.G.S.R.605(E) dated 19.06.2017 and Notification No.G.S.R.658(E) dated 28.06.2017, consequently, Central Goods and Service Tax (CGST) became applicable to the whole of India. Therefore, CGST was to apply on all the RA bills submitted by the Petitioner post 01.07.2017.

g) It is stated that on 19.06.2020, the Petitioner duly deposited an amount of Rs.12,33,386/- pertaining to service tax in relation to the first 3 RA bills issued during the pre-GST regime (pre 01.07.2017) under the Government's Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("**SVLDRS**").

h) It is further stated that, at the time of quoting its price in 2016, the Petitioner had factored in an amount of Rs.98,67,900/- towards all applicable taxes as estimated in the BOQ. However, upon the implementation of GST, the Petitioner was required to incur a total GST liability of Rs.1,40,30,638/- on various dates, thereby suffering an additional financial burden of Rs.41,82,738/- (being the difference between Rs.1,40,30,638/- and Rs.98,67,900/-). The Petitioner asserts that it is entitled to recover the said amount from Respondent No.1.

i) It is stated that Respondent No.1 *vide* its letter dated 12.02.2020, did not dispute the Petitioner's claim regarding the GST implication cost and indicated that the payment would be released only upon receipt of the same from Respondent No.4.

j) Thereafter, the Petitioner, *vide* letter dated 19.02.2020, approached Respondent No.5 seeking payment of the outstanding amount, with a copy marked to Respondent No.2. Subsequently, by letter dated 25.09.2020, the Petitioner informed Respondent No.1 that it had completed the entire scope of work and had submitted its final bill, including the GST implication for the work executed.

k) It is further stated that the Petitioner, *vide* letter dated 17.10.2020 addressed to Respondent No.5, highlighted the difficulties being faced and requested Respondent No.1 to release the pending dues as reflected in the final bill, along with the GST implication and service tax components.

l) Thereafter, several communications were exchanged between the Petitioner and Respondent No.1 as well as Respondent No.4 through letters dated 23.11.2020, 10.05.2021, 06.09.2021, 14.09.2021, 04.01.2022, and 05.07.2022, seeking clearance of the outstanding dues raised through various RA bills, including service tax and GST implications.

m) It is stated that upon perusal of letters dated 10.03.2023 and 14.06.2023 issued by Respondent No.4 to Respondent No.1, it became apparent to the Petitioner that Respondent No.1 had failed and neglected to furnish the requisite information and documents to IIT Kharagpur, which came as a shock to the Petitioner.

n) In these circumstances, the Petitioner, having no alternative, issued legal notices dated 08.09.2023 and 01.12.2023 calling upon Respondent No.1 to clear the outstanding dues. In response, Respondent No.1, *vide* reply dated 07.02.2024, contended that no amount remained payable on the ground that the Petitioner had executed a No Claim Certificate dated 14.09.2022

o) Thereafter, the Petitioner invoked arbitration by issuing a notice under Section 21 of the Act to Respondent No.1, in terms of Clause 27 of the Special Conditions of Contract.

p) In reply to the Section 21 notice, Respondent No.1 reiterated its stand that the Petitioner had received all dues and had executed a No Claim Certificate, and therefore no further amount was payable.

q) Aggrieved by this, the Petitioner has filed the present Petition.

3. Learned Counsel appearing for the Petitioner submitted that it entered into an Agreement dated 06.10.2016 with the Respondent No.1 for construction of the Post-Doctoral Students Accommodation at IIT, Kharagpur. Further, the total amount for the entire scope of the Agreement was Rs.14,87,70,294/-.

4. He further submitted that the entire work of construction was completed within the stipulated time and handed over in December 2019. Further, the Petitioner duly deposited an amount of Rs.12,33,386/- pertaining to service tax in relation to the first 3 RA bills issued during the pre-GST regime (pre 01.07.2017) under the Government's Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. He also submitted that admittedly, the Respondent No.1 cleared the entire amount due to the

Petitioner under the contract except for the service tax and GST implication cost.

5. Heard the learned Counsel for the Petitioner and perused the material on record.

6. Clause 27 of the Agreement, which contains the arbitration clause, is being reproduced hereinbelow for ease of reference and the same reads as under:

> *"27. SETTLEMENT OF DISPUTES AND ARBITRATION:*
>
> ***Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings, and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.***
>
> *i) 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-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be acceptable, he shall promptly within 15 days request the DGM (C), HPL in writing for written instructions or decisions. Thereupon, the DGM(C) HPL shall give his written*

instructions or decisions within a period of one month from the receipt of the contractor's letter.

If the DGM (C), HPL fails to give his instructions or decision in writing within the aforesaid period or if the contractors is dissatisfied with the instructions or decision of the DGM (C), HPL, the contractor may, within 15 days of the receipt of DGM (C), HPL decision, appeal to the CMD, HPL 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 CMD, HPL 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 CMD, in the prescribed format attached with SCC as Annexure-X HPL for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii) Except where the decision has become final, binding and conclusive in terms of Sub Para(i) above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the CMD HPL on behalf of IITK and with the consent of IITK. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving *reference to the rejection by the CMD, HPL of the appeal.*

It is also a term of this contract that no person other than a person appointed by such CMD, HPL on behalf IITK & with the consent of IITK, as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect any claims in writing aforesaid this 120 days of receiving the intimation from the Engineer-in-Charge that the full bill is ready for payment the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and release of all liabilities under the contract in respect of these claims. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1966) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claim by my party exceeds Rs.1,00,000/- the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be New Delhi. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties."

(Emphasis Supplied)

7. Clause 31 of the Agreement, which determines the payment of taxed and duties, is reproduced hereinbelow and the same reads as under:

"*TAXES AND DUTIES*

31. The bidder should quote the rates inclusive of all taxes as applicable in the State at time of submission of the tender like sales tax, Work Contract Tax, value Added Tax (VAT) on work contract, Forest Royalty, Labour cess etc. & and all other taxes, as applicable excluding service tax which shall be reimburse on actual basis as applicable on submission of documentary proof of having deposit the service tax to the concerned authority. In the event of non payment/default in payment of any octroi, royalty, cess, turnover tax, sales tax, including the purchase tax, consignment tax or any labour dues and E.P.F. etc, by contractor, the HPL reserves the right to withhold the dues/payments of contractor and make payment to local/state/Central Government authorities or to labours as may be."

8. It is the contention of the learned Counsel for the Petitioner that a reading of Clause 31 of the Agreement makes it evident that the Petitioner

would be entitled to the tax paid by it and, therefore, since the Respondent is not making over the payment, dispute has arisen for which the matter has to be referred to arbitration.

9. In the present case, Clause 27 of the Agreement, which is the dispute resolution clause, clearly indicates the issues which can be referred to arbitration. Clause 27 of the Agreement clearly provides that all questions and disputes relating to the meaning of the specifications, design, drawings, and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment of work are arbitrable issues.

10. The contention of the learned Counsel for the Petitioner that any question or claim which arises between the parties would include the present issue as well, cannot be accepted. A reading of the arbitration clause makes it clear that the dispute must arise in relation to specifications, design, drawings, instructions of the work and quality of workmanship. All disputes arising out of the contract are not referable to arbitration.

11. The scope of this Court while exercising the jurisdiction under Section 11 of the Arbitration Act has been crystallised by the Apex Court times without number. Undoubtedly, the scope of a reference court under Section 11 of the Arbitration Act is limited and it is for the Arbitral Tribunal to decide its own jurisdiction including the objections in respect of the

existence or validity of the Arbitration Agreement. It is well settled that the standard of scrutiny to examine the non-arbitrability of a claim is only *prima facie* and referral Courts must not undertake a full review of the contested facts and they must only be confined to a primary first review. However, when it is manifestly clear that where the parties by agreement have decided not to refer a particular issue to arbitration, and where non-arbitrability is found to be conclusive, it is always open for the reference court not to refer such disputes/issues to arbitration in order to save the parties from the cost of arbitration.

12. In the facts of the present case, this Court is of the firm opinion that the dispute regarding payment of tax, which is covered under Clause 31 of the Agreement, is not covered under Clause 27 of the Agreement, which is the dispute resolution clause, and therefore, the same ought not to be referred to arbitration.

13. In that view of the matter, this Court is not inclined to issue notice in the present Petition for the purpose of appointment of an Arbitrator.

14. Accordingly, the Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

APRIL 23, 2026
Rahul/JR