



2026:DHC:1071



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

Date of decision: 06th FEBRUARY, 2026

IN THE MATTER OF:

+ **ARB.P. 1466/2025 & I.A. 26066/2025**

M/S DYNAMIC PROJECTS

.....Petitioner

Through: Mr. A. K. Tewari, Mr. Rahul Burman
and Ms. Yosha Dutt, Advs

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Vinay Yadav, CGSC with
Advocates Ms Kamna Behrani, Mr.
Ansh Kalra and Mr. Neeraj Paulose
with Mr. A. K. Pandey, Director, and
Mr. M. K. Goyal, Joint Director, and
Mr. R. Kayasth, TLC, DGMAP

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under a Contract dated 22.05.2009.
2. The facts, as narrated in the petition, are that the Respondent No.1 invited bids for the work of "Detailed Engineering and Project Management Consultant for construction of residential accommodation at Karwar (Navy)". The Petitioner participated in the tender. The bid of the Petitioner was accepted and the Contract was awarded to the Petitioner.



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3. It is the case of the Petitioner that the work stood completed on 15.01.2018. The Petitioner, thereafter, on 21.11.2023 submitted its running account bill amounting to Rs.20,08,818.00/- to Respondent No.3 for Stage-IV under the Contract. Further on 08.01.2025, the Petitioner submitted its bill amounting to of Rs. 2,42,34,215.00/- to Respondent No.3 for Stage-V (Final stage) under the Contract. It is stated that since the bills submitted by the Petitioner for Stage-IV and Stage-V were not cleared, disputes arose between the parties.

4. It is stated that the Petitioner, thereafter, issued a notice under Article 17 of Contract requesting the Engineer-in-Chief, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi (who is the designated authority to appoint a Sole Arbitrator) to appoint an independent and impartial Arbitrator. Since no response was received, the Petitioner approached this Court by filing the present Petition seeking appointment of an Arbitrator to adjudicate upon the disputes.

5. Notice was issued in the Petition on 15.09.2025.

6. It is stated by the learned Counsel for the Respondents that the Petitioner failed to perform its duties under the Contract. According to the Respondents, the arbitration clause, which is Article 17 of the Contract, could be invoked only after the completion of defect liability period of two years. He states that a similar arbitration clause was the subject matter of challenge before this Court in another petition under Section 11 being ARB P. No. 1342/2022 and the Order passed by the learned Single Judge of this Court appointing an Arbitrator in that petition was the subject matter in an Special Leave to Appeal (C) 17079/2024, wherein the Apex Court set aside the Order of the learned Single Judge appointing an Arbitrator.



7. Heard learned Counsel appearing for the Parties and perused the material on record.
8. The main question which arises for consideration before this Court is as to whether the invocation of arbitration by the Petitioner was invalid and/or premature. It is necessary to reproduce Article 17 of the Contract, which is the arbitration clause under the Contract. The same reads as under:-

“ARTICLE 17 SETTLEMENT OF DISPUTES

All disputes, between the parties to the contract (other than those for which the decision of the DGMAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of item, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final / Direct Final Examination of Sub Division II of Institution of Surveyors (India) recognized by the Govt of India to be appointed by the Engineer-in-Chief, E-in-C's Branch, Kashmir House, New Delhi-11 or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under conditions of this contract.

Provided that in the event of abandonment of the works or cancellation of the Contract under conditions of this contract, such reference shall not take place until alternative arrangements have been finalized by



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the OWNER to get the works completed by or through any other consultant or consultants or Agency or agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Owner's right of recovery from the consultant as provided in conditions of this contract.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion.

The language of the arbitration proceedings and that of all documents any communications between the parties shall be "English".

The award of the Arbitrator shall be final and binding on both the parties to the contract.

Notwithstanding the fact that the stations of work are anywhere in India, only the courts at



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Delhi/New Delhi shall have the jurisdiction to adjudicate and settle any disputes between OWNER and the consultant. No other court outside Delhi/New Delhi shall have any jurisdiction on any matter requiring reference to Civil Court.”

9. This Court has also gone through the Order dated 04.03.2024 passed by the learned Single Judge of this Court in ARB.P. No.1342/2022, which has been relied on by the Respondents. A perusal of the said Order brought out notable factual dissimilarities from those involved in the present petition. Parts of the Order depicting such disparities are extracted as under:-

“13. The reliance placed by the respondent on the proviso of Clause 60 of GCC to contend that since the contract has been cancelled by the respondent, there can be no reference to the arbitration till alternative agreements have been made by the Government to get the works completed by or through any other also without any merit. The Kerala High Court in IvrcI (supra), has held that such conditions in an arbitration clause are treated only as an enabling provision which enables the department to raise their claims in respect of the loss caused as a result of rearrangement and they cannot be treated as a fetter on the right of the petitioner to seek remedies on account of alleged breach of contract. Relevant extract of the said judgement is as under:

“....Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies....

xxx

xxx

xxx



28. *There seems to be considerable force in the above submission. It is true that going by Condition No. 70 of the General Conditions that rearrangement of work seems to be a condition for seeking a reference to arbitration. But as rightly pointed out by the learned Senior Counsel for the petitioner, it is only an enabling provision which enables the department to raise their claims in respect of the loss caused as a result of rearrangement. That cannot be treated as a fetter on the right of the petitioner to seek remedies on breach of contract. It could not be said that cause of action for the petitioner arises only on rearrangement of the work by the department. One need not labour much on this aspect. In the decision reported in Delta Foundations and Constructions v. Kerala State Construction Corporation (2003 KHC 107) wherein an identical question was considered, it was held that going by Article 55 of the Limitation Act, the time begins to run from the date on which the contract is broken and not when the rearrangement is made...*

xxx

xxx

xxx

32. *Coming to the present claims, while the petitioner would complaint of illegal termination, the department would put the blame on the petitioner. The definite stand of the department is that as per Condition No. 70, only after rearrangement of work, any one of the parties get a right to seek arbitration.*

33. *As already noticed, the above contention cannot be countenanced. At the risk of repetition, one may notice the period of limitation. As far as the petitioner is concerned, the time commences to run from the date of breach of contract. It also does not*



stand to reason to hold that cause of action will commence only on a particular act being done by the respondent. As already noticed, the said clause is intended for the benefit of the department and cannot be taken as a ground to postpone the remedies i.e., to seek reference by the contractor on breach of contract. If one is to accept the contention of the respondent, in case the department decides not to make rearrangement for the work, or delays the same deliberately either the claim of the contractor would become barred or it would never arise.

34. There is nothing in Condition No. 70 which is relied on by the department to show that they were bound to take steps for rearrangement of the work within a stipulated period. It is difficult to understand how the period of limitation against the petitioner could be postponed by an act depending on the whims and fancies of the department which is essential to assess the damage or loss sustained by the department as a consequence of the rearrangement of the work. 35. It is significant to notice that the entire claim made by the contractor and the claim that is expected to be raised by the department consequent on the act of the petitioner are distinct and different. May be that when the claim is referred to the Arbitration Tribunal, the department may not be able to prefer a counter claim. Apart from the fact that such a contingency has already been referred to, it does not stand to reason also. Therefore, the department can have no grievance.”

14. Further, the petitioner’s contention is that it had already terminated the contract on 14.09.2021 and thereafter the cancellation of the contract by the respondent is a farce and an attempt to build up a



defence. Further, it is pointed out that the period of the contract had also come to end before reference was sought. In this context, the Jammu and Kashmir and Ladakh High Court in Mohindra Bros (supra), has held as under:

“Perusal of Condition 70, read as whole, demonstrates its object that arbitration may not be permissible during the period of Contract unless there was agreement between the parties for reference to arbitration or in the event of abandonment of Works or cancellation thereof, until alternate arrangements were finalized by the Government to get the Work completed by or through any other Contractor or Agency. The completion of Contract referred to in the Condition means the period initially fixed for completion of Contract, of course, including the extended period thereto. After the expiry of the period of Contract or extension allowed therefor, the agreement of the parties and the Proviso appended to Condition 70 thereof may not have any application, in that, after the expiry of period of Contract or extended period thereof, resort to arbitration is permissible for referring the matter to arbitration. Abandonment, cancellation or completion of work by any other Contractor or Agency would also not operate as impediment for appointment of Arbitrator when the period of Contract had otherwise expired.”

15. The above observations in Ivrl (supra) and Mohindra Bros (supra), are squarely applicable in the present case. Also, the respondent cannot be permitted to frustrate the arbitration agreement by failing to make the alternative arrangements for inordinately long period. Almost two years have expired since the date of cancellation of the contract and the alternative arrangements are apparently not yet in place. In this context, the Punjab and Haryana High Court in Sai



Enterprises (supra), has held as under:

“2. The parties had admittedly entered into a contract clause 37 whereof contains an arbitration agreement. Clause 37 entitles the respondents to appoint a serving officer which is not permissible under the amended Act. The proviso states that in the event of abandonment of the supplies or cancellation of the contract under condition Nos. 26, 27 or 28 thereof, the reference shall not take place until alternative arrangements have been finalized by the government to get the supplies completed by or through any other contractor or contractors or agency or agencies.

3. The respondents contend that the petitioner abandoned the work on 17.11.2016.

4. I will presume that to be so. I will also presume that the respondents have not as yet made the alternative arrangements as contemplated in the proviso to clause 37 of the agreement. The respondents cannot frustrate an arbitration agreement by failing to make the alternative arrangements. It is now ten months since the alleged abandonment of the work.

5. Faced with this, it is contended that the cancellation was on 03.08.2017. The respondents can always make alternative arrangements. That would not affect the appointment of the arbitrator. In any event, to leave no scope for grievance, the arbitrator shall not enter upon the reference for a period of four weeks hereafter.”

10. The abovementioned Order demonstrates that the facts in ARB P. No. 1342/2022 and the facts in the present case are distinguishable.



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11. To summarize, the facts in ARB P. No. 1342/2022, reveal that since the work was not completed, several notices were issued by the Respondent complaining that the progress in work was extremely slow and, thereafter, on 21.01.2022, the contract was terminated.

12. Upon being directed by this Court, a copy of the Special Leave to Appeal (C) 17079/2024 was handed over in Court, which contains the letter of termination dated 21.01.2022 and is being reproduced as under:

“Dear Sir,

1. References:-

(a) This HQ latter No 84841/MAP/PH-II/PKG-28/ Mumbai (Army)/957/E8 dt 30 Jul 2021.

(b) This HQ letter No 34841/MAP/PH-II/PKG-28/ Mumbai (Army)/980/E8 dt. 16 Nov 2021.

(c) This HQ letter No 84841/MAP/PH-II/PKG- 28/ Mumbai (Army)/1005/E8 dt 14 Jan 2022.

2. In spite of notices Issued to you under the references mentioned at para 1 (a) and (b) in connection with the work to be executed under the above mentioned contract, you have failed to recommence the work after, you abandoned it since Jun 2021.

3. Therefore, I Accepting Officer of the contract, on behalf of the Government, acting under the powers vested in me in terms of condition 48 of the General Condition of Contracts and without prejudice to any other right of remedy which shall have accrued or



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shall accrue hereinafter to the Government under the terms of the above said contract, hereby cancel your this contract on account of your default and the said contract shall stand cancelled with Immediate effect.

4. Please note that the remaining works as defined in the contract condition 1 (c) of the General Conditions of Contracts will be completed by me through another agency at your risk and cost.

5. You are accordingly requested to report to PM at his office in person or through an accredited representative on the date to be intimated by PM when an Inventory of complete/incomplete items of work and materials, if any, left by you at site will be made and recorded jointly. In the event of your failure to keep this appointment, Inventory will nevertheless be prepared notwithstanding your absence and the same shall be fully binding on you.

6. This is without prejudice.

*Yours faithfully
(J S Ishar)
Maj Gen DG MAP"*

13. Unlike ARB P. No. 1342/2022, in the present case, the works stand completed by the Petitioner. In fact, a Completion Certificate dated 17.02.2028 has also been issued to the Petitioner which reads as under:



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Tele/fax: (08382) 230032

PM MAP Karwar
C / O Station HQ
Post Box No: 12
Naval Base Karwar
Karwar – 581308
Karnataka

SB / CA-39 (RDS)/MAP PH- II/KWR/Corres/ 398 /Vol-VII

17 Feb 2018

RDS Projects Ltd.
HO 427, Somdutt Chambers – II
9 Bhikaji Cama Place
New Delhi – 110066

COMPLETION CERTIFICATE
CA NO:DG MAP / PHASE-II / PKG-39 /KARWAR (NAVY) / 01 of 2012-2013:
CONSTRUCTION OF DWELLING UNITS INCLUDING ALLIED SERVICES FOR LT CDR,
LT & MCPOS AT KARWAR (NAVY)

Dear Sir,

1. In pursuance of Condition 43 of the General Conditions of Contracts, I hereby certify that all the Works under **CA No DG MAP / PHASE-II / PKG-39 /KARWAR (NAVY) / 01 of 2012-2013: CONSTRUCTION OF DWELLING UNITS INCLUDING ALLIED SERVICES FOR LT CDR, LT & MCPOS AT KARWAR (NAVY)** has been satisfactorily completed by M/s RDS Projects Ltd on **15th Jan 2018** subject to rectification of the defect listed in the statement attached as Appx 'A' and 'B' and submission of pending documents in accordance with CA provisions..

2. Please ensure that the defects listed at Appx 'A' and 'B' are rectified to my satisfaction not later than 22 Feb 2018 at your cost and under own arrangement and documents handed over by 22 Feb 2018.

Jaya Rani
Lt Col
PM MAP, Karwar

Encl: Appx 'A' and 'B' (05 pages)**Copy to:-**

- | | |
|--|----------|
| 1. PCDA, E-Section, 107 Lower Agaram Road, Victoria Layout, Bangalore – 560007 | : 1 copy |
| 2. Director (Contracts), DGMAP, E-in-C's Branch, Kashmir House, New Delhi – 110011 | : 1 copy |
| 3. DGMAP, E-in-C's Branch, HQ, Kashmir House, Rajaji Marg, New Delhi – 110011 | : 1 copy |
| 4. Station Commander, C/o Navy Office, Naval Base, Karwar – 581308 | : 1 copy |
| 5. M/s Dynamic Projects Ltd, 9, Geetai Sankul, Ideal Colony, Paud Rd, Pune – 38 | : 1 copy |
| 6. Office copy | : 1 copy |



14. On account of the facts being entirely different in ARB P. No.

Signature Not Verified

Digitally Signed By: HARIOM
SINGH KIRMOJIYA
Signing Date: 09.02.2026
17:30:09

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1342/2022, the Order passed by this Court in ARB P. No. 1342/2022 and its subsequent overruling is wholly misplaced, as the work was terminated in the said case whereas, in the present case, the work stands completed.

15. Article 1 of the Contract provides definitions wherein Article 1.8 gives the definition of project which reads as under:

“1.8 "PROJECT" shall mean the Housing Complex/ Urban Development at location (s) for which consultant is to provide SERVICES under this CONTRACT”

16. In any event, the interpretation of Article 17 of the Contract as to whether the cause of action arises or not would be a subject matter for the Arbitrator to decide.

17. The Apex Court in Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, has observed as under:

*“165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. **Therefore, the scope of***



examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the



parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]”

(emphasis supplied)

18. Similarly, the Apex Court in SBI General Insurance Co. Ltd. v. Krish Spinning, **2024 SCC OnLine SC 1754**, has observed as under:

“122. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal



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alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

19. The issues as to whether the completion of work would include the defect liability period or not would also be a matter to be decided by the Arbitrator. It is well settled that the referral Court only sees as to whether dispute exists between the parties or not. In view of the fact that work stands completed, a Completion Certificate has been issued, disputes have arisen between the parties regarding the payment of money and the Contract has not been terminated, the present Petition deserves to be allowed.

20. Accordingly, Mr. Ashim Vacher, Sr. Advocate (Mob. No: 9811023217) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

21. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and



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regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

22. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

23. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

24. Needless to state, nothing in this Order shall be construed as an expression of this Court on the merits of the contentions advanced on behalf of the parties.

25. The Petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2026

S. Zakir