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

+ **ARB.P. 1666/2025 & I.A. 3814/2026**

**M/S CHAUHAN ASSOCIATES**

.....Petitioner

Through: Ms. Risha Mittal & Mr. Md. Adil  
Alam, Advs.

versus

**UNION OF INDIA & ANR.**

.....Respondents

Through: Mr. Arvnima Dwivedi, CGSC with  
Ms. Himanshi Singh, Ms. Monalisha  
Pradhan & Mr. Gagan Aggarwal,  
Advs. for R1.  
Mr. Ekansh Gupta, SPC for R2.

**CORAM:**

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

**ORDER**  
**15.05.2026**

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1. The present 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 petitioner, M/s Chauhan Associates is a company engaged in the business of execution of civil engineering and construction works. respondent no. 1 is the Union of India through the Military Engineer Services and respondent no. 2 is the competent appointing authority under the arbitration agreement. On 15.02.2019, the parties entered into a contract agreement bearing CA No. CEDZ-15/18-19 for "Completion of Incomplete Works for Provision of Specialized Tech Accn in CVD Area At Delhi Cantt." During the execution of the contract disputes arose between the parties to the *lis*. The petitioner on 17.02.2025, issued a notice under Section 21 of the Act invoking arbitration under Clause 70 of the General



Conditions of Contract (for short 'GCC').

3. Clause 70 of the GCC is reproduced below: -

**“70. Arbitration-**All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. 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 them, be referred to the sole arbitration of a [Serving Officer having degree in Engineering or equivalent or having passed final/ direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents.

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 Condition Nos. 55, 56 and 57 hereof.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the Contractor as provided in Condition 67 hereof.

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 shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, *ex parte*, if either party, in spite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to



him and shall indicate his findings, along with sums awarded, separately on each individual, item of dispute. [The arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims].

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

The Award of the Arbitrator shall be final and binding on both parties to the Contract.”

4. Learned counsel for the petitioner submits that the work was completed and the completion letter was submitted vide letter no. CA/CEDZ-15/Sat/28-19 dated 06.04.2024. Further, the petition be allowed by appointing an arbitrator.

5. Learned counsel for respondent no. 1 contends that Clause 70 provides for arbitration only upon completion of the work or upon termination of the contract. The contention is that the communication of the petitioner itself demonstrates that the work is yet to be completed.

6. Learned counsel for respondent no. 2 contends that the matter cannot be referred to arbitration by the Engineer-in-Chief and consequently respondent no. 2 is not a necessary party.

7. The Supreme Court in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India***, 2026 INSC 6 held that neither an employee of a party to the dispute be appointed as an arbitrator nor can appoint an arbitrator. The relevant paragraph is reproduced below:

“123...ii. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome



ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.”

8. From a reading of Clause 70, it is evident that the reference of disputes cannot take place unless the completion of the work or termination of the contract. From the letter dated 06.04.2024, it is evident that as per the petitioner the completion letter was submitted. It is disputed by respondent no. 1 that the work is yet to be completed. The language used in Clause 70 is widely worded and include completion and also alleged completion of work.

9. The contention of learned counsel for respondent no. 2 that the matter cannot be referred to arbitration by the Engineer-in-Chief has merit. However, the portion of Clause 70 of the GCC providing for the Engineer-in-Chief as the appointing authority is void and does not dent the substantive agreement to arbitrate between the parties.

10. The Supreme Court in *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd. and Ors.*, 2025 SCC OnLine SC 2578 dealt with an arbitration clause providing that no person other than a person appointed by the Managing Director or administrative head of the Nigam should act as arbitrator and if such appointment is not possible then the matter is not arbitrable. It was held that the exclusive power with the contractee to appoint arbitrator is unenforceable and should be severed but the agreement of arbitration survives. The portion of the clause that for any reason the arbitration by the arbitrator appointed by the contractee is not possible the matter shall not be referred to arbitration at all violates Section 18 of the Act. The relevant paragraphs of the judgment are reproduced below:

“12.12. Accordingly, the portion of Clause 25 that vests



exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

12.14. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in *CORE II*, arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

12.15. The sub-clause in Clause 25 which provides that “if for any reason the matter shall not be referred to arbitration” is vague, uncertain, and arbitrary. The expression “for any reason” confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

12.16. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;
- (iii) The unilateral and exclusionary appointment mechanism is void and severable; and
- (iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

12.17. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside.”

11. At the stage of Section 11 of the Act, this Court has to prima facie satisfy itself with regard to the existence of an arbitration clause and a



dispute between the parties. The notice dated 17.02.2025 issued by the petitioner under Section 21 of the Act indicates a dispute between the parties.

12. Accordingly, the petition is allowed by appointing Justice Ms. Rekha Palli, (Retd.) (Mobile No.9810012120) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

13. 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.

14. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

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

**AVNEESH JHINGAN, J**

**MAY 15, 2026**  
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