



\$~2

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

+ **ARB.P. 1989/2025**

M/S DHARAM PAL CHIMAN LAL

.....Petitioner

Through: **Mr. Shashi Pratap Singh & Ms.
Shagun Sabharwal, Advs.**

versus

**M/S SHREE SHAKUMBHARI GLASS AND
GLAZERS**

.....Respondent

Through: **Mr. Ajit Kumar Gola, Adv. (through
VC)**

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER
05.05.2026

%

1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.
2. The brief facts are that the petitioner was issued a work order dated 26.10.2022 by M/s Sri Sai Construction for construction of a service building. The contract was for Rs.15,10,35,473/-. The work was to be executed within twelve months from the date of issuance of the work order. The petitioner further issued a work order dated 05.12.2023 in favour of the respondent as sub-contractor for providing and fixing ACP, Aluminium, Glassworks at the service building, Thermal Power Station, Khurja. The sub-contract was for Rs.1,76,89,073/-. The terms and conditions agreed between the parties provided for dispute resolution through arbitration. The



relevant clauses of the work order are reproduced below:

16. SETTLEMENT OF DISPUTE & ARBITRATION:

- a) All disputes or differences of any kind whatsoever arising between CLIENT and the contractor in connection with or arising out of the contract or the carrying out of the work (whether during the carrying out of the work or after their completion and whether before or after the termination, abandonment or breach of the contract) except as to matters in respect of which decision of CLIENT has been stated as final, shall be referred to two arbitrators, one each to be appointed by both the parties, whose decision shall be final and binding upon the parties.
- b) In the event of disagreement between the arbitrators, the dispute shall be referred to an umpire nominated by both the arbitrators before proceeding with the reference. The Indian Arbitration & Reconciliation Act 1996 as amended from time to time shall apply to all such reference and proceedings. The arbitration proceedings are bound in its findings and shall be held in Haryana to adhere to the conditions subject to no appeal and shall deal with the question of cost of arbitration, and shall direct who is to pay the costs, all matters relating thereto in what manner the costs are to be divided between the two parties. The said arbitrator shall have full powers to open up review any decision opinion direction, certificate or valuation of CLIENT and neither contractor shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the representative of CLIENT for the purpose of obtaining his said decision. No decision given by the representative of CLIENT in accordance with foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators aforesaid.

17. LAW GOVERNING THE CONTRACT & COURT JURISDICTION:

The contract shall be governed by the law for the time being in force in the Republic of India. The civil court having ordinary original civil jurisdiction in Delhi shall alone have exclusive jurisdiction in regard to all claims in respect of this contract.

2.1 Dispute arose between the parties and the petitioner issued a notice under Section 21 of the Act on 15.09.2025. Hence, the present petition.

3. Learned counsel for the respondent contends that clauses 16 and 17 of the work order are contradictory, one refers to civil court jurisdiction while the other provides for dispute resolution through arbitration and therefore the petition is not maintainable. It is further argued that M/s Sri Sai Construction has not been impleaded as party.

4. Learned counsel for the petitioner submits that clause 16 of the work order provides for dispute resolution through arbitration and there being a dispute between the parties, an arbitrator be appointed by this court.

5. Clause 16 of the work order provides for dispute resolution through



arbitration. The contention of learned counsel for the respondent that clauses 16 and 17 of the work order are contradictory is ill-founded. Clause 17 of the work order is a jurisdiction clause and is not with regard to the mechanism provided for dispute resolution. The contention of learned counsel for the respondent that the contractor has not been impleaded as a party is of no avail.

6. The Supreme Court in **Ajay Madhusudan Patel & Ors. v. Jyotrindra S. Patel & Ors.**, (2025) 2 SCC 147 considering the decision in **Cox & Kings Ltd. v. SAP India (p) Ltd. & Anr.**, (2024) 4 SCC 1 held that it is for the arbitrator to decide the necessary parties to be impleaded under Section 16 of the Act and not by the court under Section 11 of the Act. The relevant portion is quoted below:

“76.7. Cox & Kings² specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16.”

(emphasis supplied)

7. In view of the above, the petition is allowed by appointing Ms. Manisha Suri, Advocate (Mobile No.9810075174) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.



8. 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.
9. 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.
10. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

MAY 5, 2026

‘ha’