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

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Judgment Delivered on: 20.03.2026+ **ARB.P. 2139/2025****AMAR KIRTI MEHTA**

.....Petitioner

Through: Mr. Shailesh Kumar Sinha, Mr. Ashish Pandey, Mr. Suman Kumar, Mr. Abhishek Dudpuri and Ms. Vandana, Advs.

versus

NORTHERN RAILWAY & ANR.

.....Respondents

Through: Mr. Bhagwan Sawrup Shukla, CGSC with Mr. Sarvan Kumar and Ms. Priya Dwivedi, Advs. for UOI.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [in short "Act"] seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the parties.
2. The disputes between the parties have arisen in the context of a Tender Notice, bearing No. RE/UMB/S&T/Tele/Gr.248/T-51, issued by the respondents. The petitioner was declared the successful bidder therein, pursuant to which two Letters of Acceptance [hereinafter "LOAs"] were issued in favour of the petitioner: the first being LOA No. RE/UMB/S&T/Tele/Gr-248/outdoor/L-02 dated 14.06.2019, and the second being LOA No. Core-UMB-SANDT/RE-UMB-SNTT-Gr286-od/0128610021293 dated 01.07.2020.



3. It is stated that certain disputes arose between the petitioner and the respondents regarding the Performance Bank Guarantee [in short “PBG”] amounting to Rs. 3,71,150/- furnished by the petitioner, as well as the refund of excess GST amounts deducted by the respondents. The relevant clauses governing dispute resolution under the subject tender are reproduced hereinbelow:

“49. SETTLEMENT OF DISPUTE INDIAN RAILWAY ARBITRATION RULES (Ref. latest clause 63 & 64 of G.C.C. of respective Railway).

49.1 MATTERS FINALLY DETERMINED BY THE RAILWAY :- All disputes And differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the works or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall within 120 days after receipt of the contractor’s representation, make and notify decisions on all matters referred to by contractor in writing provided that matters for which provision has been made in clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (B) of General Conditions of the contract of Railways or in any clause of special conditions of contract shall be deemed as excepted matters (matters not arbitrable), and decision of the Railway authority, thereon shall be final and binding on the contractor, provided further that excepted matters shall stand specifically excluded from the purview of the arbitration clause.

50. DEMAND FOR ARBITRATION

50.1 (i)In the event of any dispute and difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or as to the withholding by the



Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within a period of 120 days, then and in any such case, but except in any of the excepted matters referred to in clause 45.1 of these conditions, the contractor, after 120 days but within 180 days of presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be referred to Arbitration.

(ii) *The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.*

(a) *The arbitration proceedings shall be assumed to have commenced from the day a written and valid demand for arbitration is received by the Railway.*

(b) *The claimant shall submit his claim stating the facts supporting the claims along with all relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of Arbitral Tribunal. (c) The Railway shall submit its defense statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.*

(c) ***Place of arbitration- The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned railway or any other place with written consent of both the parties.***

(iii) *No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of*



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arbitration proceedings subject to acceptance by Tribunal having due regard to delay in making it.

(iv) If the Contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived.

(e) The Engineer shall as soon as may be practicable after removal of the Contractor fix and determine ex-parte or by or after reference to the panics or after such investigation or enquiries as he may consider fit to make or institute and shall certify what amount (if any) had at the time of rescission of the contract been reasonably earned by or would reasonably accrue to the Contractor in respect of the work then actually done by him under the contract and what was the value of any unused, or partially used materials, any constructional plant and any temporary works upon the site The legitimate amount due to the Contractor after making necessary deductions and certified by the Engineer should be released expeditiously."

(emphasis supplied)

4. Reference would also be apposite to Clause 63 and 63.1 of the applicable General Conditions which is as under:-

***"SETTLEMENT OF DISPUTES - INDIAN RAILWAY
ARBITRATION AND CONCILIATION RULES***

63. Conciliation of Disputes:

(i) This clause is applicable in the tender having advertised value less than or equal to Rs 50 Crore.

(ii) All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the "Chief Engineer"



or "Divisional Railway Manager" through "Notice of Dispute" provided that no such notice shall be served later than 30 days after the date of issue of Completion Certificate by the Engineer. Chief Engineer or Divisional Railway Manager shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of conciliator(s) to the Contractor.

(iii) *The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.*

(iv) *If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement duly signed by Engineer In-charge. Contractor and conciliator(s). When the parties sign the settlement agreement, it shall be final and binding on the parties.*

(v) *The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.*

(vi) *The conciliation proceedings shall be terminated as per Section 76 of 'The Arbitration and Conciliation Act, 1996.*

63.1 Matters Finally Determined by the Railway: *All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 7(j), 8, 18, 22(5), 39.1, 39.2, 40A, 43(2), 45(i)(a), 55, 55-A(5), 57, 57A.61(1), 61(2), 62(1), 63(iv) and 63.2.1 of the Standard General Conditions of Contract or in any Clause (stated as excepted matter) of the Special Conditions of the Contract,*



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shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor, provided further that 'excepted matters' shall stand specifically excluded from the purview of the Dispute Adjudication Board (DAB) and Arbitration."

5. It is stated that the subject work was duly completed, and Completion Certificates in this regard was issued on 26.06.2023 and 02.11.2023. Subsequently, the petitioner, *vide* letters dated 30.10.2023 and 20.05.2024, requested the respondents to refund the excess GST amounts deducted from the petitioner's dues.

6. In response, the petitioner received a communication dated 28.05.2024 from respondent no. 2, wherein the claim for reimbursement of the GST amount was expressly denied.

7. Consequently, a notice invoking arbitration under Section 21 of the Act was issued by the petitioner to respondent no. 1 on 14.11.2024. The said notice dated 14.11.2024 is reproduced hereinbelow *in extenso*:

"LETTER NO :- RTE/GST/NR/01

To,
THE G.M
NORTHERN Railway, Baroda house
New Delhi.

Dated:-14/11/2024

Sub:- Regarding request of appointment of arbitrator since more than 4 months.

Ref:- LOA No: 1) RE/UMB/S&T/Tele/Gr-248/outdoor/L-02 dated 14.06.2019.

2) Core-UMB-S ANDT /RE-UMB-SNTT-Gr286-0d/0128610021293 dated 01/07/2020.

All references letters are attached along with copy.



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Respected sir,

With respect to the above said two works we had requested GM core Prayagraj i.e. RE Division for appointment of arbitrator since 4 months but because of dissolution of RE division the issue is being transferred to your division but nothing is being progressive since 3 months so we request you to please look into this matter for appointment of arbitrator for resolving our issue at the earliest and the relevant correspondences are attached along with this copy, please do the needful.

Thanks

With Best Regards

AMAR CONSTRUCTIONS

For Amar Construction

-sd-

Proprietor

Copy to

1.PCSTE/NR

2.CEE/project/NR”

8. The petitioner issued another notice dated 12.03.2025 to respondent no. 1, reiterating the aforesaid claims. The said letter dated 12.03.2025 is also reproduced hereinbelow *in extenso*:

“LETTER NO :- RTE/GST/NR/02

To,

THE PCSTE

*NORTHERN Railway, Baroda house New
Delhi.*

Dated:-12/03/2025

Sub:- Regarding request of appointment of arbitrator since more than 14months.

Ref:- LOA No: 1) RE/UMB/S&T/Tele/Gr-248/outdoor/L-02 dated 14.06.2019.



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2) Core-UMB-S ANDT /RE-UMB-SNTT-Gr286-
Od/0128610021293 dated 01/07/2020.

All references letters are attached along with copy.

Respected sir,

With respect to the above said two works we had requested GM core Prayagraj i.e. RE Division for appointment of arbitrator since 14 months but because of dissolution of RE division the issue is being transferred to your division but nothing is being progressive since months so we request you to please look into this matter for appointment of arbitrator for resolving our issue at the earliest and the relevant correspondences are attached along with this copy, please do the needful.

Thanks

With Best Regards AMAR CONSTRUCTIONS

For Amar Constructions

-sd-

Proprietor

Copy to 1.GM/NR 2.CEE/project/NR 3.dycste/nr/ambala”

9. However, *vide* letter dated 29.05.2025, respondent no. 1 rejected the petitioner’s request for the appointment of an arbitrator. The relevant portion of the said letter dated 29.05.2025, communicating the refusal to appoint an arbitrator, reads as follows:

“No. NR/UMB/S&T/Tele/Gr 248/0D/L-02

Date: 29.05.2025

*M/s Amar Construction,
D2/704, Gagan Vihar Society,
Bibvewadi-Kondhwa Road,
Pune-411037*

Subject: Appointment of Arbitrator.



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- Reference :*
1. *This office LOA No. RE/UMB/S&T/Tele/Gr 248/Outdoor/L-02 dated 14.06.2019.*
 2. *This office letter No. RE/UMB/S&T/Misc/1630(Pt-IV)/089 dated 28.06.2024.*
 2. *Your office letter No. RTE/GST/NR/02 dated 12.03.2025.*
 3. *This office letter No RE/UMB/S&T/Tele/Gr 248/Outdoor dated 02.07.2024.*
 4. *Your office letter No. Nil dated 16.07.2024.*

Dear SirG

The outdoor telecom work in Moradabad-Chandausi-Harduaganj, Bareilly-Chandausi (Gr 248) section was completed on 02.07.2024 by Issuing Final Acceptance Certificate (FAC) vide letter under reference 3 above. All the payments against the above contract have already been released by the railway.

Vide letter under reference 4 above, It is certified by you that you have no claim against this contract (Copy enclosed).

In view of the above, it is stated that the claim as submitted by you vide your office letter under reference 2 above is not considerable as the contract is already closed.

More over vide letter under 2 above, you are already informed that your claim of reimbursement of GST does not meet conditions laid down by Railway Board and is hereby rejected

This is for your kind information.

*-sd-
(Vikram Singh Yadav)
Dy CSTE/Project/NR/UMB*

DA: As above.

*Copy to:- PCEE/NR/Project/UMB for kind information please.
2. Dy CSTE/HQ/NR/NDLS for kind information please."*



10. Mr. Shailesh Kumar Sinha, learned counsel appearing on behalf of the petitioner, submits that the Tender Notice, pursuant to which the LOAs were granted, undisputedly contains an arbitration clause, specifically Clause 50, titled as “Demand for Arbitration.”

11. He submits that in light of the said clause, notices dated 14.11.2024 and 12.03.2025 were issued by the petitioner to respondent no.1, for invoking the arbitral process.

12. He further submits that the Performance Bank Guarantee (PBG) amounting to Rs. 3,71,150/-, which was furnished by the petitioner on 29.07.2020 to respondent no. 2 in terms of the second LOA, remains unreturned. It is also contended that a subsequent Fixed Deposit Receipt (FDR) of an equivalent amount (Rs. 3,71,150/-), which was issued following certain anomalies that arose in respect of the initial PBG, has similarly not been returned to the petitioner.

13. *Per contra*, Mr. Bhagwan Kumar Shukla, learned counsel for the respondents, raised four contentions: *firstly*, the arbitration clause does not designate New Delhi as the seat of arbitration; *secondly*, the invocation of arbitration is barred by contractual limitation; *thirdly*, the agreement contains a mandatory pre-arbitral conciliation clause; and *fourthly*, the dispute falls within the category of ‘excepted matters’ and is, therefore, non-arbitrable.

14. He further submits that petitioner’s claim, regarding the non-return of the Performance Bank Guarantee (PBG) amounting to Rs. 3,71,150/- and Fixed Deposit Receipt (FDR) of an equivalent amount (Rs. 3,71,150/-) is entirely misplaced. He contends that the said PBG and FDR has, in fact, been returned to the petitioner.



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15. Having perused the record and heard the learned counsel for the parties, this Court finds no merit in the objections raised by the learned counsel for the respondents.

16. The existence of the Tender Notice and the LOAs is not in dispute; consequently, the arbitration clause (Clause 50) is also admitted. A perusal of Sub-clause 50.1(c) reveals that the place of arbitration shall be the headquarters of the concerned railway. In the present case, the concerned railway is the Northern Railways, which has its headquarters at “Baroda House, New Delhi.” Therefore, the respondents’ contention that the clause does not designate New Delhi as the seat of arbitration is misplaced and factually incorrect.

17. Furthermore, while exercising jurisdiction under Section 11(6) of the Act, the Court is required to *prima facie* satisfy itself as to the existence of a valid arbitration clause, a requirement which stands satisfied in the present case.

18. As regards the submission that invocation of arbitration is barred by contractual limitation, it noted that the petitioner’s claim for reimbursement of GST amount was denied by the respondent no. 2 *vide* letter dated 28.05.2024, and the first request for the appointment of an arbitrator was made on 14.11.2024, which is after 120 days but before 180 days as provided in clause 50.1(i).

19. Even otherwise, the law is well settled that even if arbitration clause postulate the period within which a claim could have been raised by the parties to the contractual agreements, such a stipulation in a contractual obligation would not be valid and binding in view of Section 28 of the Contract Act, 1872. Reference in this regard may be had to a decision of



Hon'ble Supreme Court in *Grasim Industries Limited v. State of Kerala*; (2018) 14 SCC 265. In the said decision the High Court had held that when the arbitration clause itself prescribes a time-limit for raising the disputes by appointing an Arbitral Tribunal and to have it settled within 30 days, the same procedure should be followed or adopted within the time specified. However, the Hon'ble Supreme Court observed that the arbitration clause did not postulate the period within which a claim could have been raised by the parties to the contract; nevertheless, any such stipulation in the arbitration clause would not be valid and binding. The relevant extract from the said decision reads thus:

8. Based on the aforesaid clause, the High Court had recorded its conclusion as under : (*Grasim Industries Ltd. [Grasim Industries Ltd. v. State of Kerala, 2003 SCC OnLine Ker 630 : (2004) 1 KLT 981] SCC OnLine Ker para 10*)

“10. ... In view of the specific provision in the arbitration clause for raising the claim within the same year and to have it settled by the Arbitral Tribunal within the specified time, the above request for arbitration was beyond the period prescribed in the arbitration clause. When the arbitration clause itself prescribes a time-limit for raising the disputes by appointing an Arbitral Tribunal and to have it settled within 30 days, the same procedure should be followed or adopted within the time specified. The applicant did not make a demand for appointment of an Arbitral Tribunal within the stipulated time. The notice itself was issued long after the time stipulated in the arbitration agreement. It appears that the company was closed down and the company wanted to dispose of the raw materials and the State did not permit as materials had been supplied to the company at a concessional rate. It was at that time the notice was issued for the arbitration.”

9. Having perused Clause 9 of the supplementary agreement dated 27-10-1988, we are of the view that the interpretation placed by the High Court on Clause 16, was wholly misconceived. The aforesaid



clause, did not postulate the period within which a claim could have been raised by the parties to the contractual agreements. Even otherwise, we are of the view that in terms of Section 28 of the Contract Act, 1872, such a stipulation in a contractual obligation would not be valid and binding.

XXXX

XXXX

XXXX

11. Section 28(b) unequivocally provides that an agreement which extinguishes the right of a party on the expiry of a specified period, would be void. Therefore, even if a restricted period for raising an arbitral dispute had actually been provided for (as was determined in the impugned order), the same would have to be treated as void.

12. In view of the legal position expressed hereinabove, the limitation with reference to the claim raised by the appellant, would have to be determined only under Article 137 of the Limitation Act.....”

(emphasis supplied)

20. It now settled proposition of law that the period of limitation for making a request under section 11(6) of the Act is three years in terms of Article 137 of the Limitation Act, 1963, and the limitation is to be counted from the date on which 30 days from the date of notice by one party to the other for appointing arbitrator expires.¹ In the present case the first request for appointment of an arbitrator was made by the petitioner *vide* notice dated 14.11.2024 and the petition was filed on 18.11.2025, therefore, the petition is clearly within the period of limitation.

21. With respect to the contention raised by Mr. Shukla, that the existence of a pre-arbitral conciliation clause is mandatory and must be exhausted before invoking arbitration, this Court finds such an argument to be misconceived. It has been held in various decisions of this Court that such pre-arbitral tiers are directory in nature and not a mandatory bar to the

¹ Arif Azim Company Ltd. v. Aptech Ltd., (2024) 5 SCC 313



invocation of arbitration. In *Jhajharia Nirman v. South Western Railways*, 2024 SCC OnLine Del 7133, a Coordinate Bench of this Court, dealing with a similar arbitration clause in a Railway Contract, has observed that any pre-condition in an arbitration agreement binding one of the contracting parties to either exhaust the pre-arbitral amicable resolution procedures or to take recourse to conciliation are directory, and not mandatory in nature.

22. Likewise, in *Oasis Projects Ltd. v. National Highway & Infrastructure Development Corporation Limited*, (2023) 1 HCC (Del) 525, this Court had observed as under:

“12. The primary issue to be decided in the present petition is, therefore, as to whether it was mandatory for the petitioner to resort to the conciliation process by the Committee before invoking arbitration. Though Article 26.2 clearly states that before resorting to arbitration, the parties agree to explore conciliation by the Committee, in my opinion, the same cannot be held to be mandatory in nature. It needs no emphasis that conciliation as a dispute resolution mechanism must be encouraged and should be one of the first endeavours of the parties when a dispute arises between them. However, having said that, conciliation expresses a broad notion of a voluntary process, controlled by the parties and conducted with the assistance of a neutral third person or persons. It can be terminated by the parties at any time as per their free will. Therefore, while interpreting Article 26.2, the basic concept of conciliation would have to be kept in mind.”

(emphasis supplied)

23. Similar view has been taken in a recent decision of a coordinate bench of this court in *JCC Infraprojects Bil JV v. North Western Railway Jaipur*



Rajasthan, Through General Manager and Others; 2026 SCC OnLine Del 285.

24. Lastly, it was argued by Mr. Shukla, that the present dispute falls within the category of ‘excepted matters’ and is thus non-arbitrable. In this regard it may be observed that a particular claim falls within the scope of “Excepted Matters” is itself an aspect that is best left to be decided by a duly constituted Arbitral Tribunal as determination of arbitrability of claims requires detailed examination of the factual matrix. This position is in consonance with the decision of a coordinate bench of this court in ***N.K. Sharma Vs. The General Manager Northern Railway; [ARB.P. 893/2022]; dated 01.12.2023***, wherein, the court examined a similar clause (Clause 63.1) providing for ‘excepted matters’, and observed as under –

“18. This Court has also perused the invocation letter dated 01.06.2022 and prima facie, none of the claims raised therein falls within ‘excepted matters’. However, this aspect would require an in-depth examination of the factual matrix which can be done by a duly constituted Arbitral Tribunal, as contemplated in the judgment of the Supreme Court in Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1.”

(emphasis supplied)

25. The aforementioned position is further fortified by another decision of this Court in ***Techno Global Services Private Limited Vs. Gail India Limited & Anr; [O.M.P. (I) (COMM.) 251/2024]; dated 14.11.2024***, wherein following pertinent observations *qua* the ‘excepted matter’ were made –

“15. It is noticed that the relief qua payment of outstanding amounts as referred to in the notice invoking arbitration and



interest thereon cannot be said to be ex facie barred. Also, whether or not the other reliefs falls within the scope of “Excepted Matters” is an aspect which will require an interpretative exercise construing the relevant terms of the contract between the parties in juxtaposition with the relief sought to be claimed.

*16. It has been held in a number of cases that the decision as to whether, a particular claim falls within the scope of “Excepted Matters” is itself an aspect that is best left to be decided by a duly constituted Arbitral Tribunal. In this regards, reference is apposite to the judgments of this Court in **N.K Sharma v. General Manager Northern Railway**, 2023 SCC OnLine Del 7576 and **Braithwaite Burn and Jessop Construction Co. Ltd v. Northern Railway**, 2023 SCC OnLine Del 8176.*

*17. Importantly, in **SBI General Insurance Co. Ltd. Vs. Krish Spinning**, 2024 INSC 532 and **Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re**, 2023 SCC OnLine SC 1666 and it has now been exclusively and authoritatively laid down that the scope of enquiry in the present proceedings is confined to ascertaining the existence of an Arbitration Agreement and “nothing else”.*

(emphasis supplied)

26. In view of the above, there is no merit in the objections raised by the learned counsel for the respondents. The petition is thus allowed.

27. Accordingly, dispute between the parties is referred to arbitration of Mr. Amandeep Joshi, Advocate, D/1089/2006, [Mob.9818065100].

28. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi – 110003 [“DIAC”] and shall be governed by the Rules of DIAC including as to the remuneration of the learned Arbitrator.



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29. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act prior to entering upon the reference.
30. It is made clear that all the rights and contentions of the parties are left open for adjudication by the learned Arbitrator.
31. Petition Stands disposed of in the above terms.

VIKAS MAHAJAN, J

MARCH 20, 2026/N.S. ASWAL