HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No. 56/2025
CNR: RJHC020295292025 | URN: ARBAP / 81U / 2025

M/s H.S. Mehta Infra Jcc Infraprojects (Jv), Having Its Office At Aklank House, Opposite Railway Mal Godown, 761/30, Tikamganj, Ajmer-305001 Through Its Authorised Signatory Shri Ajay Kumar Jain S/o Shri Rajendar Kumar Jain, Aged About 64 Years.

----Applicant/Contractor

Versus

1. North Western Railway, Through The General Manager, Near Jawahar Circle, Malviya Nagar, Jaipur 302017.
2. The Chief Engineer (Construction)-III, North Western Railway, Near Jawahar Circle, Malviya Nagar, Jaipur-302017.
3. The Dy. Chief Engineer (Construction)-I, North Western Railway, Mal Road Ajmer.

----Non-Applicants/Employer

For Applicant(s)	:	Mr. Susshil Daga (through V.C.), Mr. Chitransh Mathur, Ms. Anjali Sharma & Mr. Tanishq Jhavery
For Non-Applicant(s)	:	Mr. C.S. Sinha

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL

Order

23/11/2026

1. The applicant-petitioner has preferred this arbitration application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short ‘the Act of 1996’) for appointment of the Arbitrator.

2. Heard learned counsel for the parties and perused the material available on record.

3. Clause 64.3 of the General Conditions of Contract provides for the resolution of dispute by way of Arbitration under the provisions of the Act of 1996, which states as under:

> "**64.(3): Appointment of Arbitrator:**
> **64.(3)(a): Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:**
> **64.(3)(a)(i):** In cases where the total value of all claims in question added together does not exceed 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.
> **64.(3)(a)(ii):** In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.
> Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Aritral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64.(3)(b): Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:

(i) The Arbitral Tribunal shall consist of a panel of three (3) retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor’s nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

64.(3)(c)(i): If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

64.(3)(c)(ii):

(a) The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal should record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.

(b) Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute(s) submitted to arbitration, applicability of time "limitation to any dispute, any violation of agreed procedure regarding

conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

64.(3)(c)(iii)(i) Qualification of Arbitrator (s):

(a) Serving Gazetted Railway Officers of not below JA Grade level.

b) Retired Railway Officers not below SA Grade level, one year after his date of retirement.

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(iii) While appointing arbitrator(s) under Sub-Clause 64.(3)(a)(i), 64.(3)(a)(ii) and 64.(3)(b) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

64.(3)(d)(i): The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

64.(3)(d)(ii): A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

64.(3)(d)(iii): A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

64.(4): In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

64.(5): Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

64.(6):

(a) The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne

> equally by both the parties, provided parties sign an agreement in the format given at Annexure XV to these condition after/while referring these disputes to Arbitration. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.
> (b) (I) Sole Arbitrator shall be entitles for 25% extra fee over the fee prescribed by Railway Board from time to time.
> (ii) Arbitral Tribunal shall be entitled to 50% extra fee if Award is decided within 6 months.
> **64.(7)** Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules thereunder and relevant para of General Conditions of Contract (GCC) and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause."

4. The notice has been served to the non-applicants on 27.04.2024.

5. Learned counsel for the applicant submits that the Arbitrator be appointed as there is an arbitration clause and notice has also been served.

6. Learned counsel for the non-applicants submits that the dispute is not arbitrable.

7. The arbitrability of the dispute, if any, be raised before the Arbitrator and accordingly, this Court appoints Hon'ble Mr. Justice Ajay Rastogi (Former Judge, Supreme Court of India), R/o-A-6, Anand Niketan, New Delhi, to act as the Sole Arbitrator to decide all issues without prejudice to the rights and contentions raised in the present application. Non-applicants will be at liberty to raise all the objections before the learned Arbitrator.

8. The arbitration fees shall be determined in accordance with the Fourth Schedule of the Act of 1996, as amended. The fee of the learned Arbitrator will be equally borne by both the parties.

9. The arbitration application is allowed accordingly.

10. Copy of this order be sent to the appointed Sole Arbitrator.

(SANJAY K. AGRAWAL),CJ

D-A/2/Amit/RIYA