HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 133 of 2026

M/S Raj Corporation Limited

.....Applicant(s)

Versus

Dakshinanchal Vidyut Vitran Nigam Ltd And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Raghav Arora
Counsel for Opposite Party(s)	:	Baleshwar Chaturvedi

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Raghav Arora, learned counsel for the applicant as well as Sri Baleshwar Chaturvedi, learned counsel for the opposite parties.

2. Since affidavits have been exchanged between the rival parties and they do not propose to file any further affidavit, thus with the consent of the parties, the application is being decided at the admission stage.

3. The case of the applicant is that the applicant, M/S Raj Corporation Limited, is a public limited company engaged in construction, development and maintenance of public infrastructure projects for government bodies for the past considerable period. The opposite parties, Dakshinanchal Vidyut Vitran Nigam Limited, a constituent company under the Government of Uttar Pradesh, invited tenders having Specification Nos. DVVNL-MM/1973-2016 to 1974-2016 for Conversion of Overhead Electrical Power Distribution System (including H.T.LL.T. lines) into Underground Electrical Power Distribution System in several districts in the State of Uttar Pradesh, including Tender No. 1973 for District Aligarh under Deen Dayal Upadhyaya Gram Jyoti Yojana (DDUGJY) on semi-turnkey basis. The applicant, along with others, applied in pursuance of the same and the bid being lowest, was awarded the contract and subsequently Letter of Award/Order of Supply and Erection dated 06.09.2016 came to be issued. The scope of the work was for SConversion of Overhead Electrical Power Distribution System (including H.T.LL.T. lines) into Underground Electrical Power Distribution System in District Aligarh.

4. Since disputes and differences arose between the parties regarding work and non-consideration of the pending payments so a notice came to be issued by the applicant. As the claims were not settled and there was no reply or response given at the end of the opposite parties, so the applicant sent a letter to the Project Manager/Competent Authority submitting its disputes for decision. The applicant also invoked the arbitration clause, being Clause 38 of the General Condition of Contract, and addressed its arbitration notice to the opposite party, nominating 3 people namely, (i) Mr. Salil Kumar Yadav (Retd. Chief Engineer, UPPWD), (ii) Mr. Arun Kumar Sinha, (Retd. Chief Engineer, UPPWD) and (iii) Mr. Mukesh Kumar Jain (Retd. CGM, NHAI), as its nominee arbitrator and requested the opposite party to nominate its nominee. The opposite party, post receiving the arbitration notice, instead of nominating someone on its behalf as the arbitrator, communicated their desire to pursue the dispute through conciliation and the applicant, in goodwill to resolve its dispute, accepted the proposal, without prejudice to its rights. Various meetings took place, however, nothing fruitful came out. Constrained with the same, the applicant had no option but to institute the present proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator.

5. This Court entertained the application on 24.07.2026 while passing the following orders:-

> *"1. Shri Baleshwar Chaturvedi, learned counsel for the opposite party seeks time to file an affidavit answering the averments and allegations contained in the Arbitration Application.*
>
> *2. Let a counter affidavit be served upon the counsel for the applicant by 07.08.2026. Thereafter, the rejoinder affidavit be filed by 11.08.2026.*
>
> *3. Put up this case on 12.08.2006, as fresh. "*

6. Counter affidavit has been filed by the Executive Engineer, MM-2, Dakshinanchal Vidyut Vitran Nigam Ltd., dated 17.08.2026, to which rejoinder affidavit is available on record.

7. Learned counsel for the applicant has sought to argue that in view of the provisions contained under Clause 38 of the Agreement, the issue itself is

arbitrable and the dispute is subsisting and alive and once the opposite parties have not appointed the arbitrator, this Court may appoint an independent arbitrator as the right of the opposite parties to appoint arbitrator stands forfeited in view of the provisions contained under Section 12(5) of the Arbitration and Conciliation Act. Further submission is that once the dispute is arbitrable then no possible objection can be raised by the opposite parties.

8. On the other hand, Sri Baleshwar Chaturvedi who appears for the opposite parties, as per the instructions received from his client, submits that there happens to be an arbitration clause and the issue is arbitrable, but all questions be left open regarding limitation or even otherwise to be raised before the Arbitrator.

9. I have heard the submissions so made across the bar and perused the record.

10. Apparently, there happens to be an agreement/contract executed between the applicant and the opposite parties. Clause 38 of the Conditions of Contract provides as under:-

> "*If any dispute, difference or controversy shall at any time arise between the Contractor on the one hand and the UPPCL and the Engineer of the Contract on the other hand Contract, or as the true construction, meaning and intent of any part or condition of the same or as to manner of execution or as to the quality or description of or the payment for the same, or as to the true intent, meaning, interpretation construction or effect of the clause of the contract specification or drawing or any of them or as to anything to be, done committed or suffered in pursuance of the contract or specification, or as in the mode of carrying the contract into effect or as to the breach or alleged breach or as to obviating or compensation for the commission any of such breach or as to any other matter or thing whatsoever connected with or arising out of the contract, and whether before or during the progress or after the completion of the contract such question, difference or dispute shall be referred for adjudication to the M.D., UPPCL or any other person nominated by him on this behalf and his decision on writing shall be final binding and conclusive. This submission shall be deemed to be a submission to*

arbitration modification thereof. The arbitrator may from time to time with consent of the parties, enlarge the time for making and publishing the award.Upon every or any such reference, the costs of and incidental to the reference and award respectively shall be at the discretion of the arbitrator, who shall be competent to determine the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party and to direct by whom in what manner the same shall be borne and paid.Work under the contractor shall, if reasonable, continue during the arbitration proceedings and no payment due or payable by the corporation shall be withheld on account of such proceeding. In case of refusal/ neglect by such nominee M.D., UPPCL may nominate another person in his place."

11. Since the rival parties are in agreement that there happens to be an arbitration clause and the issue itself is arbitrable in nature, thus, in view of the provisions contained under Section 12(5) of the Arbitration and Conciliation Act, 1996, now the opposite parties are not invested with the jurisdiction to appoint an Arbitrator in view of the law laid down in the case of ***TRF Ltd. vs. Energo Engineering Projects Ltd.; (2017) 8 SCC 377***, thus, this Court has no option but to appoint an Arbitrator. Furthermore in view of the judgment in the case of ***GOQII Technologies Private Limited Vs. Sokrati Technologies Private Limited 2024 INSC 853***, the issue relatable to limitation and other aspects are to be dealt with by the arbitrator which are open to be raised as and when the same stands occasioned.

12. Since, as per the counsel for the parties, there happens to be a dispute and difference between the parties and the dispute is arbitrable, thus, this Court appoints Hon'ble Mr. Justice Pankaj Naqvi, resident of C-82, Sector 30, Noida, 201301, Mobile No. 9415236770, retired judge of this Court as the sole Arbitrator.

13. Let the consent of Hon'ble Mr. Justice Pankaj Naqvi (Retd.) be obtained by the office in terms of the provisions contained in Section 11(8) read with the Section 12(1) of the Act by sending a letter to him.

14. The application stands **disposed of**.

15. In case, the proposed Arbitrator does not give his consent or make

disclosure in terms of sub-section (1) of Section 12 of the Act, the application will be listed before this Court for limited purpose for proposing the name of the Arbitrator. The Arbitrator shall be entitled to fee and expenses as per IVth Schedule of the Act.

16. All legal questions including limitation are left open to be raised by the respective parties before the arbitrator.

(Vikas Budhwar,J.)

October 27, 2026
Rajesh

Digitally signed by :-
RAJESH KUMAR
High Court of Judicature at Allahabad