HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 135 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/1537-2015 to 1525-2015 for Urban Electrification works in the selected towns in several districts in the State of Uttar Pradesh, including Tender No. 1542 for District Kannauj 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 15.07.2016 came to be issued. The scope of the work was for Urban Electrification works in the selected towns in District Kannauj.

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 39 of the General Condition of Contract, and addressed its arbitration notice to the opposite party, nominating Sri Ramesh Kumar Gandhi 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 39 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 39 of the GCC provides as under:-

> "*39.1 All disputes or differences in respect of which the decision, if any, of the Project Manager and/or the head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration in the manner provided herein below:*
>
> *39.2 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Employer and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking Arbitration Clause, the arbitrator appointed by the party invoking the Arbitration clause shall become the sole arbitrator to conduct the arbitration.*
>
> *39.3 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be Agra.*
>
> *39.4 The decision of the majority of the arbitrators shall be final and binding upon the parties. In the event of any of the arbitrators dying,*

neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

39.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract."

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 Dilip Gupta (Retd.), resident of Tower 8, Type 7, Floor 6 NBCC Building, East Kidwai Nagar, New Delhi, Mobile No. 9415215086, of this Court as the sole Arbitrator.

13. Let the consent of Hon'ble Mr. Justice Dilip Gupta (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