



2025:DHC:1193



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1759/2024**

Date of Decision: **19.02.2025**

IN THE MATTER OF:

BHARAT HEAVY ELECTRICALS LIMITEDPetitioner

Through: Mr. Sarojanand Jha, Mr. Suraj Malik,
Ms. Rajreeta Ghosh, Mr. Rahul
Kumar and Ms. Muskan Saxena,
Advocates.

versus

FITWELL CONSTRUCTIONSRespondent

Through: Mr. Pranav Jain and Mr. A. Karthik,
Advs.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel appearing for the parties.
2. The instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) has been filed by the petitioner to seek the appointment of a sole Arbitrator for adjudication of the dispute that has arisen between the parties.
3. The facts of the case would indicate that on 18.06.2010, Bharat Heavy Electricals Limited issued a tender notification for material handling and erection, testing, commissioning and trial operation of pelton type turbines, generators, switchgear, bus duct, excitation system, C and I etc. of 4x130



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MW Tapovan Vishnugad Hydro Electric Project of NTPC Limited at Animathgad (Helong), 14 km from Joshimath and 20 km from Pipalkoti in District-Chamoli, Uttarakhand. The LOI was issued in favour of the respondent. Pursuant to which, on 21.02.2011, the parties entered into a contract agreement for carrying out the aforesaid work.

4. There appears to be certain claims raised by the respondent which were not mitigated and thereafter, the respondent invoked the arbitration clause contained in the General Terms and Conditions of the Contract on 03.08.2020. The petitioner therein filed a counter claim which came to be rejected by the Arbitral Tribunal on 20.06.2022.

5. The petitioner then filed an application under Section 34 of the 1996 Act. The proceedings which were initiated by the respondent were culminated *vide* final award dated 08.02.2023. The said award is subject matter of challenge by the petitioner in OMP (COMM) 292/2023. The petitioner issued a letter to the respondent intimating withdrawal of the remaining contract at the cost and risk of the petitioner. The petitioner issued fresh arbitration notice to the respondent on 21.06.2024 and the respondent appears to have disputed the said show cause notice. Therefore, the petitioner has filed the instant petition for the appointment of an Arbitrator.

6. Learned counsel appearing for the petitioner places reliance on Clause 33 of the General Terms and Conditions of the Contract which has been reproduced in notice invoking arbitration in 21.06.2024 and reads as under:-

“All disputes between the parties to the contract arising out “of” “or” in relation to the contract, other than those for which the decision of the Engineer Of any other person is by the contract expressed to be final and conclusive, shall after written notice by either party to the contract to the other party, be referred to sole arbitration of the General Manager or his



nominee. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Reconciliation Act, 1996. The parties to the contract understand and agree that it will be no objection that the General Manager or the person nominated as Arbitrator had earlier in his official capacity to deal directly or indirectly with the matters-to which the contract relates or that in the course of his official duties had expressed views on all or any of the matters in dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract. In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason or his award being set aside by the Court for any reason, it shall be lawful for the General Manager or his successor, as the case may be, either to act himself as the Arbitrator or to appoint another Arbitrator in place of the outgoing Arbitrator in the manner aforesaid. The Arbitrator may, from time to time, with the consent of both the parties to the contract, enlarge the time for making the award. Work under the contract shall be continued during the arbitration proceedings. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine.”

7. It is apparent that an arbitration clause is present for the resolution of any disputes between the parties i.e. Clause 33 of the General Terms and Conditions of the Contract dated 21.02.2011. There are no obstructions to the appointment of an autonomous Sole Arbitrator for the adjudication of disputes as stipulated by the jurisprudence of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ ***TRF Limited v. Energo Engineering Projects Ltd.***,² ***Bharat Broadband Network Limited v. United Telecoms Limited.***,³ and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***⁴.

8. Learned counsel appearing for the respondent has various objections with respect to tenability of the claim, however, all those objections can be

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



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raised during the course of arbitral proceedings.

9. The Court, therefore, reserving all rights and contentions of the parties, deems it appropriate to appoint Hon'ble Justice Satish Agnihotri (Former Chief Justice of High Court of Sikkim) (Phone no. 9498095770, Email id - officeagnij@gmail.com) as the sole Arbitrator.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering on reference.

12. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

14. The petition stands disposed of in the aforesaid terms.

PURUSHAINDR KUMAR KAURAV, J

FEBRUARY 19, 2025/p/dp

[Click here to check corrigendum, if any](#)

⁴ In re, 2023 SCC OnLine SC 1666.