



2025:DHC:3117



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 346/2025**

Date of Decision: **24.04.2025**

IN THE MATTER OF:

M/S G AND G SERVICES PVT. LTDPetitioner

Through: Mr.Abhinav Mishra and Mr.Shreesh
Pathak, Advocates.

versus

NEW DELHI MUNICIPAL COUNCILRespondent

Through: Mr.Akshay Verma, ASC with
Mr.Ravi Krishan Chandna, Assit. SC
with Mr.Abhay Singh, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A. 4582 and 4583/2025 (For exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

ARB.P. 346/2025 and I.A. 4584/2025

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties in terms of the letter of acceptance dated



07.12.2022 read with Agreement bearing no. 102/EE (BMPK)/ 2022-23.

2. There are various objections raised by the respondent in its reply opposing the petition under Section 11(6) of the 1996 Act.

3. A perusal of the said objections would indicate that, except for the one related to the petition being premature; the remaining objections concern the merits of the case.

4. With respect to the maintainability of the instant petition, learned counsel for the respondent contends that the notice for appointment of the Arbitrator was sent by the petitioner only on 24.01.2025, and a reminder thereto, was sent on 17.02.2025. He then contends that on the very same date i.e. on 17.02.2025, without expiration of 30 days mandatory period, the petitioner has approached this Court; and therefore, the instant petition is premature. In addition, he also contends that the substantial amount has already been received by the petitioner, and there are various other reasons as to why the petitioner should not be entitled to the claims as raised herein.

5. In response, learned counsel for the petitioner submits that the earlier notice dated 21.10.2024 was inadvertently not placed on record, but he seeks to do so now by way of the rejoinder. According to him, the notice for appointment of an Arbitrator was issued way back on 21.10.2024, and since the same was not acted upon, thereafter, the second notice was issued on 24.01.2025. He submits that in the instant petition, the notice dated 24.01.2025 has been described to be the first notice which factually is incorrect.

6. I have considered the submissions made by learned counsel for the parties and also perused the record.



7. The Court at the stage of Section 11 of the 1996 Act, the Court is required to determine whether there exists a valid arbitration clause.
8. So far as the issues regarding entitlement or otherwise of the claimant are concerned, the same needs to be adjudicated by the Arbitrator, once the Arbitrator allow the parties to adduce the evidence.
9. The Court takes note of the Clause 25 of the Agreement bearing no. 102/EE (BMPK)/ 2022-23, which reads as under:-

“CLAUSE 25

Settlement of Conciliation and Arbitration

....

....

25.2 Arbitration:

If the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period, either party may promptly give notice in the proforma prescribed in Appendix-XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable), hereinafter referred to as the Arbitrator Appointing Authority as indicated in Schedule F, for appointment of Arbitrator.

However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above.

In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration.

*(a) **Number of Arbitrators:** if the contract amount is less than Rs.100 crore, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs.100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.*

*(b) **Qualification of Arbitrators:** It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public works engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of India).*



The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator.

The age of Arbitrator at the time of appointment shall not exceed 75 years.. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) Parties to select Arbitrator: Base1 on the criteria specified above, a list of empanelled Arbitrators has been prepared in CPWD, and the parties shall have option to select an Arbitrator from the list sent to them.....”

10. It is thus seen that the dispute is amenable to be adjudicated by the arbitrator. It is explicitly evident that where there exists an arbitration clause in the event any dispute arises between the parties, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the same. Reference can be made to the decisions 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, In re*⁴.

11. Having considered the overall facts and circumstances of the instant case, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

12. Accordingly, Mr. Archit Mishra, Advocate (Mobile No.9412636726, e-mail id: vraarchit@gmail.com) is appointed as the sole Arbitrator.

13. The arbitration would take place under the aegis of the Delhi

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547

⁴ 2023 SCC OnLine SC 1666.



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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.

14. 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.

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

16. 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.

17. The petition stands disposed of in the aforesaid terms along with the pending application(s).

APRIL 24, 2025

Nc/sph

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any