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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19.01.2026

\+ ARB.P. 127/2024

M/S ASHA ENTERPRISES PVT LTD THROUGH SHRI VARINDER KUMAR SHARMA DIRECTOR .....Petitioner

Through: Mr. Sanjay Bansal, Adv.

versus

HINDUSTAN PREFAB LTD & ANR. .....Respondents

Through: Mr. Varun Nischal & Ms. Saira Tagra, Advs. for R-1.
Mr. Shekhar Raj Sharma, Additional Advocate General, State of Haryana with Ms. Nidhi Narwal & Ms. Srishti Jain, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition has been filed under Section 11(6) of the **Arbitration and Conciliation Act, 1996**[1], for the appointment of an Arbitrator to adjudicate upon a commercial dispute between the parties.

[1] Act

2. Learned counsel appearing for the Petitioner has approached this Court invoking Clause 26 of the Special Conditions of Contract ["**SCC**"] read with Clause 25 of the General Condition of Contract ["**GCC**"].

3. Learned counsel for the Petitioner submits that there is no requirement to follow the pre-arbitration procedure which is set out in Clause 25 of the GCC. The said clause is reproduced as under:

> "**SETTLEMENT OF DISPUTES AND ARBITRATION**
>
> Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:
>
> (i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of thirty days from the receipt of the contractor's letter.
> If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the

contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, if there be no Chief Engineer, the administrative head of PWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chief Engineer or the administrative head of PWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-

charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) the Jammu and Kashmir Arbitration and Conciliation Act 1977 (35% of 1997) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and, in all cases, where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid."

(emphasis supplied)

4. Learned counsel for the Petitioner contends that Clause 25 of the GCC is severable in nature and operates in two distinct compartments, and that Clause 25(i) is confined to disputes pertaining to drawings, records or decisions rendered in writing by the *Engineer-in-charge*, which arise during the course of execution of the works.

5. In support of the aforesaid contention, learned counsel for the

Petitioner places reliance on the Judgment dated 02.05.2014 passed by a Coordinate Bench of this Court in ***M/s Garg Builders v. Railtel Corporation of India & Ors***[2]**.**

6. He thus contends that there is no requirement to follow the pre-arbitral procedure as under the relevant clause. He also states that, in any event such pre-arbitral procedures are at best directory and not mandatory. He further submits that Clause 26 of the SCC cannot be read in isolation and must be construed harmoniously with Clause 25 of the GCC. For ready reference, clause 26 of the SCC is reproduced hereinunder:

> "**26. Settlement of Disputes and Arbitration:**
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> In the event of any dispute of whatever nature howsoever arising under or out of or in relation to this Agreement that cannot be mutually resolved by the parties within 30 (thirty) days of service of written notice by one party to the other clearly setting out the dispute in question, the same shall be settled by way of arbitration proceedings to be conducted by a sole Arbitrator to be appointed by the Chairman and Managing Director, HPL in accordance with the Arbitration and Conciliation Act, 1996, or any subsequent enactment or amendment thereto. Award of the sole Arbitrator shall be final and binding on both the parties. The venue of the Arbitration shall be at New Delhi. The language of the arbitration and the award shall be English. Subject to foregoing, the parties agree to subject themselves to the jurisdiction of competent courts at New Delhi alone to try and adjudicate upon any matter concerning this Agreement. However, any award passed in pursuance of the arbitration proceedings may be executed by any court of competent jurisdiction anywhere.
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> It is expressly agreed that the Agency shall continue to perform the services uninterruptedly pending the resolution of any dispute between the HPL and Agency, timely and satisfactory completion of the Project being of the essence of this Agreement. The submission to arbitration of any dispute arising during construction shall not delay or otherwise affect the continuing performance of the work by the Agency."

[2] ARB.P. 94/2014.

7. ***Per contra***, learned counsel appearing for the Respondent submits that the present petition is not maintainable as Clause 25 of the GCC embodies a mandatory in-house departmental dispute resolution mechanism which is required to be exhausted prior to the invocation of arbitration. He submits that the said clause, in clear and unequivocal terms, stipulates that recourse to arbitration can be taken only upon completion of the prescribed pre-conditions.

8. Learned counsel for the Respondent vehemently places reliance on the express stipulation contained in Clause 25 of the GCC, which records that "*it is a term of the contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration*".

9. In support of the aforesaid contention, learned counsel appearing for the Respondents places reliance upon the judgments in ***Garg Builders v. Hindustan Prefab Ltd.***[3]***, Welspun Enterprises Ltd. v. NCC Ltd.***[4]***, R.S. Khanna and Ors. v. RITES Ltd. through its Executive Director & Anr.***[5]***, Chhabra Associates v. HSCC (India) Ltd.***[6]***, Sushil Kumar Bhardwaj v. Union of India***[7]***, M/s BNAL Prefabs Pvt. Ltd. v. Hindustan Prefab Limited***[8] and ***Sanjeev Aggarwal v. Hindustan Prefab Limited***[9]***.***

10. In the background of these precedents, it is submitted by the learned counsel for Respondent that in cases involving identical provisions of the GCC, this Court has consistently held that where an

[3] ARB.P. 47/2020
[4] 2022 SCC OnLine Del 3296
[5] 2024:DHC:942
[6] 2023 SCC OnLine Del 232
[7] 2009 SCC OnLine Del 435
[8] ARB.P. 1023/2023
[9] (ARB.P. 330/2024).

agreement prescribes a specific procedure to be followed prior to invocation of the arbitration clause, such procedure is mandatory in nature and cannot be bypassed while seeking recourse to arbitration.

11. This Court has heard the learned counsel for the parties at length and also perused the relevant contractual clauses.

12. Upon a detailed examination of the clauses and the judicial precedents cited, this Court is of the opinion that the contention advanced on behalf of the Petitioner is manifestly incorrect and unsubstantiated. Clause 25(i) of the GCC categorically provides for a "*decision in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract*".

13. The language of the clause is not confined to disputes pertaining only to drawings or issues arising during the execution of the work; rather, it is sufficiently broad to encompass all disputes arising out of or in connection with the contract.

14. This interpretation is also in consonance with the judgment relied upon by the learned counsel for the Respondents, as rendered by the Co-ordinate Bench of this Court in ***Garg Builders v. Hindustan Prefab Ltd*** *(supra).* The relevant portions of the Judgement are reproduced hereinunder:

> "**7.** These above objections of the learned counsel for the respondents i.e. ESIC / NDRF and HPL have been contested by Mr. Malhotra by stating that the initial clause of the SCC clearly stipulates that it is the provisions of the SCC, which would prevail over the GCC. He also state that between the provisions of GCC and SCC, the SCC being specified (which shall prevail) the petitioners has followed the same and as such, the stage of appointment of an Arbitrator has arisen. He also state now for the petitioners to follow the procedure would relegate back the petitioner by a period of six months really defeating the purpose of arbitration.
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13. The plea of Mr. Malhotra is by relying upon the following stipulation in the SCC.

> "These special conditions shall supercede/ supplement the relevant conditions given in CPWD Form 7/8 (Edition 2014 with up to date corrections and amendments) in the tender document."

14. The said plea looks appealing on a first blush but on a deeper consideration, the said clause does not in unequivocal terms state that the SCC shall supersede the GCC. It also consisted of the words '*supplement the relevant conditions given in CPWD Form 7/8*'. If that be so, stipulations in GCC and SCC have to be read harmoniously. If both are read harmoniously then the submission made by learned counsel for the respondent No.1 shall hold good. The intent of reading GCC / SCC harmoniously would mean that it is only those disputes, which have been narrowed down, shall ultimately be referred to the arbitration process, subject to the exclusion as contemplated in Clause 16 of the SCC.

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16. From the reading of the aforesaid paragraphs, it is clear that the Supreme Court has in unequivocal terms said that if a clause stipulates that under certain circumstances there can be no arbitration then the controversy pertaining to the appointment of an arbitrator has to be put to rest. It is necessary to state that Mr. Malhotra would contest the submission made by learned counsel for the respondent No.1 by stating that the claims of the petitioner are also not with regard to the sub-standard work. Hence, all the claims which have been raised by the petitioner are necessarily to be referred to arbitration process. I say nothing on this submission made by Mr. Malhotra as this Court is of the view, in view of the plea raised by learned counsel for the respondent No.1 that the remedy for the petitioner is to invoke the procedure/process as contemplated under the GCC/SCC (to be read harmoniously), the petitioner need to be relegated to the said procedure/process and if the petitioner still has any grievance, to seek such remedy as available in law."

15. Further, the tone and tenor of the last paragraph of the Clause 25 (i) of the GCC and which is extracted at Para 8 *(supra)* makes it necessary for the parties to undergo the pre-arbitral process.

16. Furthermore, a reading of the pre-arbitral procedure would clearly lead us to conclude that the same is not merely conciliatory, but is a structured, 3-tier mechanism, enshrined in the Agreement for

resolution of disputes.

17. In view of foregoing, this Court finds no merit in the present petition.

18. For the foregoing reasons, the present petition lacks merit and is hereby dismissed.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 19, 2026/ν/kr