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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CNR No. DLHC010883162025
+ **ARB.P. 1895/2025**
M/S SUNEHARI BAGH BUILDERS PVT LTDPetitioner
Through: Mr. Anurag Kaushik, Adv.

versus

PUBLIC WORKS DEPARTMENT GOVT OF NCT OF
DELHIRespondent
Through: Mr. Anubhav Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **03.08.2026**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996¹, seeking appointment of a Sole Arbitrator to adjudicate the disputes arising out of the Agreement No. 12/EE/Edu.(M) South West/2018-19 executed between the parties for construction of additional SPS type classroom in various Government Schools.

2. It is the case of the Petitioner that although the work was completed on 16.04.2022 and the Respondent granted extension of time up to the actual date of completion without levy of any compensation, certain claims and outstanding payments in terms of the executed work have not been released. Therefore, the disputes have arisen between the parties.

3. Clause 25 of the Agreement contains an arbitration clause

¹ "Act" hereinafter



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which provides that disputes arising between the parties shall first be referred to the Disputes Redressal Committee (“DRC”) and upon failure of the said mechanism, the disputes shall be referred to arbitration.

4. It is borne out from the record that the Petitioner initially raised its claims before the Respondent by letter dated 24.08.2022 and in the alternative, requested that the said letter be treated as a notice under Section 21 of the Act for reference of the disputes to arbitration.

5. The record further reflects that the Petitioner repeatedly invoked the DRC mechanism in terms of Clause 25 of the Agreement. Although the Respondent subsequently nominated a Chairman of the DRC, no DRC proceedings were conducted and no decision was rendered. Thus, the pre-arbitral mechanism as required by the Clause 25 stood exhausted.

6. Upon a specific query from the Court, learned Counsel appearing for the Respondent was unable to point out any objection with regard to the existence of the arbitration agreement or the maintainability of the present petition.

7. In such circumstances, it is well settled that, while exercising jurisdiction under Section 11 of the Act, the scope of enquiry is confined to examining the *prima facie* existence of an arbitration agreement².

² **SBI General Insurance Co. Ltd. v. Krish Spinning** 2024 SCC OnLine SC 1754



8. There is no dispute as far as the arbitration cause is concerned.

Clause 25 of the General Conditions Contract is extracted hereinafter:

“CLAUSE 25

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 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 or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and, give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, 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, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General



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of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD (CE/ADG/DG) for appointment of arbitrator on prescribed proforma as per Appendix XV under intimation to the other party.

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.

The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- a. A party fails to appoint the second Arbitrator, or*
 - b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then*
- The Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.*

(ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where Tendered amount is Rs. 100 Crore or less. Where Tendered Value is more than Rs. 100 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India). This shall be treated as a



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mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, 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 as per the Act.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

9. The claimed amount is stated to be Rs.15 crores approx.

10. Accordingly, Mr. Upendra Malik, (Engineer), Retd. Special Director General, CPWD (Mob. No. +91-9891318773) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within four weeks from today.

11. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required



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under Section 12(2) of the Act within three weeks of entering reference.

12. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

13. It shall be open to the parties to raise all pleas, including objection as to arbitrability and jurisdiction, before the learned Sole Arbitrator who shall decide the same in accordance with law.

14. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes with claims and counter claims independently and on their own merits, uninfluenced by any observations contained in the present order.

15. The Registry is directed to send a receipt of this order to Mr. Upendra Malik, learned Arbitrator through all permissible modes including email.

16. Accordingly, the present petition is disposed of in the above terms.

OM PRAKASH SHUKLA, J

AUGUST 3, 2026/pa