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

Date of decision: 18<sup>th</sup> MARCH, 2025

IN THE MATTER OF:

+ **ARB.P. 320/2025**

**NKG INFRASTRUCTURE LIMITED**

.....Petitioner

Through: Ms. Risha Mittal, Mr. Rohan Narula,  
Mr. Sanchit Gupta and Md. Adil  
Alam, Advocates.

versus

**UNION OF INDIA THROUGH DIRECTOR GENERAL,  
MARRIED ACCOMODATION PROJECT & ANR.**

.....Respondents

Through: Ms. Monika Arora, CGSC with Mr  
Subhrodeep Saha and Mr Prabhat  
Kumar, Advs.  
Ms. Archana Kumari, GP

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

1. The Petitioner has approached this Court under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Petitioner and the Respondents under Contract Agreement dated 26.08.2010.
2. Material on record discloses that Respondent No.1 issued a tender for Construction of Dwelling Units Including Allied Services for Officers, Sr. Sailors (MCPO)/Jr. Sailors at Naval Site Goa (Vasco). It is stated that the Petitioner herein submitted its bid for the said tender and the same was



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accepted for a lump sum amount of Rs.1,15,38,41,717/- and Contract Agreement dated 26.08.2010 was entered into between the Petitioner and the Respondents. It is stated that under the said Contract, the Respondent No.1 herein issued a Work Order to the Petitioner on 06.09.2010 which was to be completed within 25 months, i.e. on or before 05.10.2012. It is stated that the work was delayed and the Petitioner herein sought extension of time from the Respondents for completion of the work. Material on record further discloses that the Respondent No.1 certified that the work order for Construction of Dwelling Units Including Allied Services for Officers, Sr. Sailors (MCPO)/Jr. Sailors at Naval Site Goa (Vasco) has been completed satisfactorily by the Petitioner on 30.06.2023. Final bill of Rs.3,51,85,38,829/- was submitted by the Petitioner on 11.01.2024. It is stated that despite passing of more than nine months from the date of submission of the final bill when the bill was not cleared by the Respondents, the Petitioner herein invoked Clause 60 of the General Conditions of Contract invoking Arbitration by issuing a Notice under Section 21 of the Arbitration and Conciliation Act, 1996 to the Respondents on 11.10.2024. It is stated that since the Respondent failed to reply to the said notice, the Petitioner has approached this Court by filing the present Petition.

3. Notice in the present Petition was issued on 17.02.2025. Learned Counsel appearing for the Respondent on advance notice sought some time to get instructions.

4. Clause 60 & 61 of the General Conditions of Contract reads as under:

*"60. Arbitration.*



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*All disputes, between the parties to the contract (other than those for which the decision of the DG MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/Direct Final Examination of Sub Division II of Institution of Surveyors (India) recognised by the Govt of India to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.*

*Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 49 and 50 hereof.*

*Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 46, 47 or 48 hereof, such reference shall not-take-place-until-alternative arrangements have been finalised by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies.*

*Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in condition 57 hereof.*



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*If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new*

*Arbitrator to act in his place: The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of case and pleading in defense.*

*The Arbitrator may proceed with the arbitration, ex parte, if either party, in spite of a notice from the Arbitrator, fails to take part in the proceedings.*

*The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, alongwith sums awarded, separately on each individual item of dispute. The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion.*

*The award of the Arbitrator shall be final and binding on both the parties to the Contract.*

#### *61. Jurisdiction of Courts,*

*Irrespective of the place of issue of tenders, the place of execution of contract or the place of payment under the Contract, the Contract shall be deemed to have been made at the place from where the acceptance of tenders has been issued. The Courts of the place from where the acceptance of the tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the Contract."*

5. Clause 61 of the GCC prescribes that the Courts of the place from where the acceptance of the tender has been issued shall alone have the



jurisdiction to decide any dispute arising out of the Contract. The Letter of Acceptance was issued from Delhi and, therefore, in terms of Clause 61 of the GCC, this Court has the jurisdiction to entertain the present Petition.

6. The learned Counsel for the Respondent has appeared on advance notice. It is stated by the learned Counsel for the Respondent that as per the terms of the Agreement, only an Engineer can be appointed as an Arbitrator to adjudicate on the disputes between the parties.

7. *Per contra*, learned Counsel for the Petitioner states that a substantial amount of money is due and payable and considering the nature of the contract a retired Judge of this Court should be appointed as an Arbitrator to adjudicate on the disputes between the parties.

8. The part of Clause 60 of the GCC which gives the authority to the Engineer-in-Chief, Army Headquarters, New Delhi, to refer the matter to a Sole Arbitrator has now been held to be bad in law by the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760 and Central Organisation for Railways Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 SCC OnLine 3219.

9. Looking at the nature of the claim wherein several items in the final bill have not been upheld, the arguments that would be advanced regarding the manner and performance of the contract from both the sides would be technical in nature, this Court is inclined to appoint Mr. Anand Kumar, Chief Engineer (Retd.), Haryana Government (Mob: 9716753377) as the Sole Arbitrator to adjudicate upon the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and



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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 Arbitration & Conciliation Act within a week of entering on reference.

12. 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.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**MARCH 18, 2025**

*Rahul*