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

\# **CNR No. DLHC010446912026**

\+ ARB.P. 1682/2026

MATHRA DASS AHUJA AND SONS .....Petitioner

Through: Ms. Yashika Malhotra, Mr. Sumit Kalra, Mr. Akash, Ms. Anisha, Advs.

versus

PUBLIC WORKS DEPARTMENT .....Respondent

Through: Mr. Lalitaksh Joshi and Mr. Keshav Poonia, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 14.10.2026

1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act of 1996[1] seeking appointment of an Arbitrator for resolution of disputes between the parties arising out of Agreement dated 31.12.2019.

2. 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 agreement.

3. In the present case, the arbitration agreement is contained in Clause 25(ii) of the aforesaid Agreement. It is reproduced hereinbelow:

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"Clause 25: Settlement of Disputes by Conciliation and Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used in 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 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.

25.1 Conciliation: If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawing, 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 claimed for each dispute to the Conciliator (Special Director General or the Additional Director General concerned with the work, as applicable) in the proforma prescribed in Appendix XVII mentioned in Schedule F, under intimation to the other party. The Conciliator may then request each party in writing to furnish a brief written statement describing the disputes and the points at issue. Each party shall send a copy of such statement to the other party. At any stage of the conciliation proceedings, the Conciliator may request a party to submit to him such additional information as he deems appropriate. When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, he may re-formulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on a settlement of the disputes, they may draw up and sign a written settlement agreement on non-judicial stamp paper as per Stamp Act. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. The termination of conciliation proceedings shall be in accordance with Section 76 of The Arbitration and Conciliation Act, 1996. No party shall be represented before the said Conciliator by an advocate or legal counsel. The conciliation proceedings shall be completed within 45 days from the receipt of reference. This time may be enlarged by 15 days by the Conciliator. The conciliation proceedings shall be

[1] "Act" hereinafter

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deemed to have been terminated at the end of 60 days from the receipt of reference.

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 of 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 70 years. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) Parties to select Arbitrator: Based 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.

25.3 Appointment of Sole Arbitrator: The parties may opt for appointment of the Arbitrator of the Ministry of Housing and Urban Affairs. In such cases, the party seeking arbitration has to submit an express agreement in writing as per Appendix XIX towards waiver of Section.

12(5) of the Arbitration and Conciliation Act, 1996 along with the notice for appointment of Arbitrator in the proforma prescribed in Appendix XVIII, under intimation to the other party. The Arbitrator Appointing Authority shall, within 30 days of receipt of the said notice, appoint Arbitrator of the Ministry of Housing and Urban Affairs as Arbitrator in the matter, provided the other party also

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submits waiver of Section 12(5), ibid in Appendix XIX within 7 days of the receipt of the said notice.

Where any one of the parties does not opt for the Arbitrator of the Ministry of Housing and Urban Affairs, or does not submit the waiver agreement, the Arbitrator Appointing Authority shall propose five Arbitrators from the list of CPWD Empanelled Arbitrators, to the party seeking arbitration under intimation to the other party within 15 days of receiving the notice. The party seeking arbitration shall give his choice for one of them within 15 days of receiving the list, and the Arbitrator Appointing Authority shall appoint the chosen personas the Sole Arbitrator within 15 days of the receipt of choice.

It is a term of this arbitration agreement that if the parties fail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empanelled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator from the said list.

25.4 Appointment of Arbitral Tribunal of three Arbitrators: The Arbitrator Appointing Authority shall prepare two separate lists of five Arbitrators each from the list of CPWD Empanelled Arbitrators and send one to the party seeking arbitration and other to the responding party, within 15 days of the receipt of notice. The parties will then choose any one Arbitrator from the list provided to them within 15 days of receipt of the list. The Arbitrator Appointing Authority shall then appoint those chosen by the respective parties as Arbitrators and also a third Arbitrator from the list of CPWD Empanelled Arbitrators to act as presiding Arbitrator within 15 days of receipt of choice from both the parties.

It is a term of this arbitration agreement that if the parties fail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empanelled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator from the said list.

25.5 Applicable Law: The provisions of the Arbitration and Conciliation Act, 1996 (Act 26 of 1996) and any further statutory modification or re-enactment thereof shall be applicable. Further, the fast-track procedure for arbitration contained in Section 29B of the said Act shall apply.

25.6 Fee payable to Arbitrator(s): The fee payable to the arbitral tribunal shall be as per CPWD OM No. 2/2006/SE(TLC)/CG/137 dated 19.11.2019 (or latest amendment) and shall be shared equally by both the parties.

25.7 Place of Arbitration: The place of arbitration shall preferably be as mentioned in Schedule F. However, the Arbitral Tribunal may decide the place in consultation with both the parties.

25.8 Terms of reference: The Arbitral Tribunal shall adjudicate on only such disputes as are referred to it by the Arbitrator Appointing Authority and give separate award against each

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dispute referred to him and shall give reasons for the award in all cases where the total amount of the claim by any party exceeds Rs.1,00,000.

25.9 Interest on Arbitration award: It is also a term of this arbitration agreement that where the Arbitral award against any dispute is for the payment of money, no pre-suit and pendent-elite interest shall be payable on any part of the Arbitral award."

4. Learned Counsel for the Respondent is not disputing the arbitration agreement between the parties.

5. In the aforesaid circumstances, this Court finds no impediment in appointing a Sole Arbitrator.

6. Accordingly, Mr. Chandra Shekhar Mital, Chief Engineer (Retd.) (Mob. No.9718477697) 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 three weeks from today.

7. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

8. 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.

9. It shall be open to the parties to raise all pleas before the learned

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Sole Arbitrator including and not limited to impleadment of parties, objections as to arbitrability, jurisdiction etc., who shall consider the same in accordance with law.

10. 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 independently and on their own merits, uninfluenced by any observations contained in the present order.

11. The Registry is directed to send a receipt of this order to Mr. Chandra Shekhar Mital, learned Arbitrator through all permissible modes including email.

12. Accordingly, the present petition is disposed of in the above terms. Pending applications, if any, stands disposed of.

OM PRAKASH SHUKLA, J

OCTOBER 14, 2026/at

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