IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 22.07.2026
DELIVERED ON: 19.08.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 261 OF 2026

MOTHER INDIA CONSTRUCTION
VERSUS
UNION OF INDIA

<u>Appearance:</u>

Mr. Sarajit Sen, Adv.
Mr. Tapas Singha Roy, Adv.

..... for the petitioner

Ms. Rashmi Bothra, Adv.
Ms. Priti Jain, Adv.

..... for the respondent

<u>JUDGMENT</u>

<u>Gaurang Kanth, J.:-</u>

1. The Petitioner, a registered MSME construction company, has preferred the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the disputes that have arisen between the parties out of the Contract Agreement bearing No. 39/HQ/KGP/2020-21 dated 28.08.2020, executed between the parties, in respect of construction of seven station buildings, namely Raghunathbari, Rajgoda, Keshabpur, Mahisadal, Barda, Basuliya Sutahata and Durgachak, pursuant to the Notice Inviting Tender bearing No. E/KGP-HQ-03-2020 and the Letter of Acceptance dated 08.04.2020.

2. The facts leading to the present petition are as follows:

3. The petitioner, is engaged in civil engineering and construction work and is registered under the Micro, Small and Medium Enterprises Development Act,

2006. The respondent is the Union of India, represented by the General Manager, South Eastern Railway.

4. Pursuant to Notice Inviting Tender No. E/KGP-HQ-03-2020, the petitioner was awarded the work of construction of seven station buildings under South Eastern Railway, upon acceptance of its tender by Letter of Acceptance dated 08.04.2020. Two work orders dated 15.07.2020 were thereafter issued, followed by execution of Contract Agreement No. 39/HQ/KGP/2020-21 dated 28.08.2020, incorporating the General Conditions of Contract of South Eastern Railway. Clause 64 thereof contains the arbitration agreement. The stipulated contract value was Rs. 4,28,03,041.03, with a completion period of 18 months.

5. During execution of the work, the same was suspended by order dated 27.11.2020 and the completion period was subsequently extended on five occasions, ultimately up to 30.06.2024. The petitioner thereafter completed five of the seven station buildings. The respondent made payments against nine running account bills, including the ninth bill which was treated as the final bill, and a completion certificate was issued on 22.11.2024. The sites for the remaining two station buildings, namely Keshabpur and Basulia Sutahata, were allegedly not handed over to the petitioner.

6. The petitioner subsequently raised various claims, including towards price escalation, transportation costs, loss of profit, overhead expenses, and idle labour and machinery charges arising from the suspension and non-execution of the remaining works. By letter dated 05.01.2026, the petitioner submitted eight heads of claim and sought settlement thereof. A reconciliation meeting held on 12.02.2026 did not resolve the disputes. The petitioner thereafter, by its advocate's letter dated 18.02.2026, invoked the arbitration clause and contended that the General Manager, South Eastern Railway, was rendered ineligible to act as, or appoint, an arbitrator in view of Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule thereto. A subsequent attempt at resolution by the respondent also failed.

7. The petitioner accordingly contends that the agreed mechanism for constitution of the Arbitral Tribunal has failed and seeks appointment of an independent arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

Submissions on behalf of the Petitioner

8. Mr. Sarajit Sen, learned Advocate for the Petitioner submits that a valid and subsisting arbitration agreement exists between the parties in the form of Clause 64 of the General Conditions of Contract, forming part of Contract Agreement No. 39/HQ/KGP/2020-21 dated 28.08.2020, and that Clause 64(7) thereof contemplates adjudication of all disputes and differences in accordance with the Arbitration and Conciliation Act, 1996. He submits that real and subsisting disputes have arisen between the parties concerning reimbursement for use of steel/plywood shuttering, entitlement under the Price Variation Clause, extra transportation costs, loss of profit for non-execution of two station buildings, onsite and offsite overhead expenses, idle labour and machinery costs during suspension, and interest thereon, all of which were formally raised by the Petitioner's letter dated 05.01.2026 and rejected by the Respondent, including at the reconciliation meeting dated 12.02.2026, which ended without resolution.

9. Learned Counsel for the Petitioner further submits that the General Manager, South Eastern Railway, being an officer and employee of the Respondent, is rendered ineligible under Section 12(5) of the Arbitration and Conciliation

Act, 1996, read with the Seventh Schedule thereto, to be appointed as, or to himself appoint, an Arbitrator, and that such ineligibility was expressly communicated by the Petitioner's Advocate's letter dated 18.02.2026. He submits that the agreed contractual mechanism for appointment has accordingly failed, warranting exercise of this Court's power under Section 11(6) of the Act.

10. Dealing with the Respondent's contention, raised in its Affidavit in Opposition, that the Petitioner unconditionally accepted the 9th Running Account-cum-Final Bill and signed the No Claim Certificate without demur, thereby extinguishing all claims, learned Advocate submits that such contention is factually incorrect and stands squarely refuted by the Petitioner's own letter dated 01.09.2025, addressed to the Sr. Divisional Engineer/HQ, the General Manager, the Principal Chief Engineer and other officers of the Respondent. By the said letter the Petitioner placed on record that acceptance of the final bill amount and signing of the No Claim Certificate, measurement book and other connected documents were done under threat and pressure from the Respondent, coupled with acute financial distress and the imminent risk of non-refund of the security deposit, and that such acceptance was expressly stated to be "without prejudice" to the Petitioner's various heads of claims and "under protest." He submits that despite due receipt of the said letter, the Respondent has suppressed this material fact in its Affidavit in Opposition, and that the existence of this contemporaneous protest is itself sufficient to demonstrate that a live and arbitrable dispute survives, notwithstanding execution of the No Claim Certificate.

11. In this connection, learned Counsel for the Petitioner places strong reliance upon the judgment of the Hon'ble Supreme Court in ***R.L. Kalathia & Company v. State of Gujarat,*** reported in ***(2011) 2 SCC 400***, wherein it has been authoritatively held that mere issuance of a "No Dues" or "No Claim" Certificate is not conclusive and does not, by itself, disentitle a contractor from pursuing otherwise genuine claims, and that the adjudicating authority is required to examine the circumstances under which such certificate came to be executed, particularly the practical reality that such certificates are frequently obtained as a pre-condition for release of admitted dues. He further places reliance upon the judgment of this Court in ***Chaitanya Kumar Dey v. Union of India, AP-777 of 2016,*** decided on *09.01.2026*, wherein, applying the very same principle in the context of a similar Railway contract containing a *pari materia* No Claim clause (Clause 43(2) of the GCC), this Court held that mechanical reliance on a No Claim Certificate, without examining whether the claims raised were in fact covered by it or the circumstances of its execution, including a case where the contractor had specifically asserted, by contemporaneous letter, that the final bill and certificate were signed under protest, amounts to non-adjudication and renders the resultant decision unsustainable. Learned Counsel for the Petitioner submits that the facts of the present case are on an even stronger footing, inasmuch as the Petitioner's protest letter dated 01.09.2025 was addressed even prior to the acceptance being treated as final, was duly received by the Respondent, but was deliberately withheld from disclosure before this Court.

12. Mr. Sarajit Sen, learned counsel for the petitioner accordingly submits that the question of whether the No Claim Certificate operates as a full and final discharge, or was executed under economic duress and kept alive by contemporaneous protest, is itself a triable and arbitrable issue that falls squarely within the domain of the Arbitral Tribunal and cannot be adjudicated by this Court at the Section 11 stage. He submits that the scope of enquiry under Section 11 of the Act is confined to the *prima facie* existence of the arbitration agreement and disputes. He accordingly seeks appointment of an independent Arbitrator to adjudicate all disputes between the parties, including the effect of the No Claim Certificate, leaving all contentions on merits open to be urged before the Arbitral Tribunal. He submits that the disputes have manifestly arisen between the parties and therefore, this Court ought to appoint an independent Arbitrator.

Submissions on behalf of the Respondent

13. Ms. Rashmi Bothra, learned Counsel for the Respondent submits that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable, inasmuch as the Petitioner unconditionally accepted the 9th Running Account-cum-Final Bill on 25.10.2024 and furnished a No Claim Certificate, pursuant to which the Completion Certificate was issued on 22.11.2024. It is submitted that thereafter, by its own letter dated 11.01.2025, the Petitioner itself sought release of the Security Deposit along with earnest money on the express ground that the work stood completed, which request was duly approved by the Respondent's letter dated 27.01.2025, and the Security Deposit and earnest money were accordingly withdrawn by the Petitioner. It is submitted that this conduct on the part of the Petitioner, seeking closure of the contract and release of its retention money without any reservation whatsoever, is wholly inconsistent with the existence of any subsisting protest, and conclusively demonstrates accord and satisfaction of the contract by performance.

14. Ms. Rashmi Bothra, submits that the Petitioner's letter dated 01.09.2025, now relied upon in the Affidavit in Reply as constituting a contemporaneous protest, was addressed more than ten months after acceptance of the final bill and nearly seven months after the Petitioner had itself sought and secured release of the Security Deposit treating the contract as closed. It is submitted that such a letter, coming as it does after the Petitioner had already taken the benefit of final closure of the contract, cannot be treated as a genuine, contemporaneous protest, but is at best a subsequent, self-serving assertion manufactured after the event. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***ONGC Mangalore Petrochemicals Ltd. v. ANS Constructions Ltd.,*** reported in ***(2018) 3 SCC 373***, wherein it has been authoritatively held that where a no-dues/no-claim certificate is withdrawn or protested only after a lapse of time following receipt of full and final payment, without any contemporaneous demur, the story of duress becomes an afterthought, and a mere allegation of financial duress or coercion, without anything more placed on record to substantiate the same, does not give rise to an arbitrable dispute. The conduct of the party accepting the amount and the certificate voluntarily establishes that the contract was discharged voluntarily. It is submitted that in the present case, the delay of over ten months, coupled with the Petitioner's own conduct in seeking release of the Security Deposit in the interregnum without reservation, places this case on an even stronger footing against the Petitioner than the facts before the Hon'ble Supreme Court in ***ONGC Mangalore Petrochemicals*** (supra).

15. Learned Counsel for the respondent further places reliance on the judgment of this Court in ***Hindusthan Builders v. Ircon International Ltd.,*** reported in ***2022 SCC OnLine Cal 197***, rendered on facts closely analogous to the present case, involving a Railway/PSU construction contract containing a No Claim clause in *pari materia* with Clause 64 of the GCC herein. It is submitted that in that case, this Court held that where the applicant remained silent for several months after accepting the final bill and issuing a No Claim Certificate before raising a plea of economic duress, and no *prima facie* material was placed on record to show that the certificate was obtained on the dotted line or under coercion, the applicant was not entitled to dispute the No Claim Certificate at the Section 11 stage and invoke the arbitration clause; the application was accordingly dismissed. It is submitted that this Court further held, following the binding view of Hon'ble Supreme Court that a bald plea of coercion or duress, unsupported by *prima facie* material, is insufficient to make out an arbitrable dispute. Learned Counsel further submits that the Petitioner in the present case has placed no material whatsoever to demonstrate that the No Claim Certificate or the final bill were signed under any real or specific coercion, and the principle laid down in both the aforesaid judgments applies on all fours to the present case.

16. Learned Counsel further submits that even independent of the No Claim Certificate, the Petitioner's claim for price escalation is contractually barred, inasmuch as the Letter of Acceptance dated 08.04.2020 and the Contract Agreement expressly stipulate under "Special Note 3" that the Price Variation Clause is not applicable to the contract, and this express exclusion cannot be defeated merely because the final executed value happened to exceed

Rupees Five Crores. It is submitted that Clause 64(7) read with Clause 64(3)(a)(ii) of the GCC constitutes a valid, binding, and specifically agreed contractual procedure for constitution of the Arbitral Tribunal from a panel of Gazetted Railway Officers where the claim amount exceeds Rs. 10,00,000/-, and the general power under Section 11 does not permit a party to unilaterally bypass such contractually agreed mechanism.

17. Ms. Rashmi Bothra, accordingly submits that applying the ratio of ***ONGC Mangalore Petrochemicals*** (supra) and ***Hindusthan Builders*** *(supra)*, this Court while exercising jurisdiction under Section 11, must examine at least prima facie whether the plea of coercion is bona fide and genuine. It is submitted that in the present case the plea is belated, self-serving, unsupported by any *prima facie* material, and squarely contradicted by the Petitioner's own subsequent conduct in seeking closure of the contract; and that consequently no arbitrable dispute survives. It is submitted that the present petition is misconceived, devoid of merit, and liable to be dismissed *in limine* with exemplary costs.

Legal Analysis

18. This Court has heard the learned counsel appearing for both the parties at length and has carefully examined the pleadings, and the annexures relied upon by the respective parties and also the judgments cited at the Bar.

19. Upon examining the aforesaid documents, this Court is of the view that the core issue to be decided in the present matter is whether, in light of the Petitioner having accepted the 9th Running Account-cum-Final Bill and signed a No Claim Certificate, any arbitrable dispute survives between the parties so as to warrant reference to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996, or whether the contract stands fully and finally discharged by accord and satisfaction, rendering the present petition non-maintainable.

20. This Court had an earlier occasion to analyse the law relating to the effect of a No Claim Certificate in ***Chaitanya Kumar Dey*** (supra), wherein, in the context of a similar Railway construction contract containing a No Claim clause *pari materia* with the present case, it was held that mere issuance of a No Claim Certificate is not conclusive and does not, by itself, disentitle a contractor from pursuing otherwise genuine claims, and that the adjudicating authority, i.e, the Arbitral Tribunal is required to examine the circumstances under which such certificate came to be executed, *"particularly having regard to the practical realities of contractual payments, where such certificates are often obtained as a pre-condition for release of bills."* It was further held that mechanical reliance upon a No Claim Certificate, without examining whether the claims raised were in fact covered by it, and without considering a contemporaneous protest placed on record by the contractor, "amounts to non-adjudication" and renders the resultant decision unsustainable, being contrary to the settled position in ***R.L. Kalathia & Co. (Supra)*** and ***Ambica Construction v. Union of India,*** reported in ***(2006) 13 SCC 475***.

21. Applying the aforesaid principles to the facts of the present case, this Court notes that the Petitioner has placed on record its letter dated 01.09.2025 , addressed to the Sr. Divisional Engineer/HQ, the General Manager, the Principal Chief Engineer, the Divisional Railway Manager, and the Sr. Divisional Engineer(CO) of the Respondent, wherein the Petitioner has expressly placed on record that acceptance of the final bill amount, and signing of the No Claim Certificate, measurement book and other connected documents, were done under threat and pressure from the Respondent, coupled with acute financial crisis and the imminent risk of non-refund of the Security Deposit, and that such acceptance was expressly stated to be "without prejudice" to the Petitioner's various heads of claim and to be treated as accepted and signed "under protest."

22. The existence of this document, and the question of whether it constitutes a genuine and timely protest sufficient to keep the claims alive notwithstanding the No Claim Certificate, is, in the considered view of this Court, a matter requiring examination on merits, and cannot be summarily foreclosed at the Section 11 stage. It is not for this Court, exercising a limited jurisdiction under Section 11, to weigh the sufficiency or credibility of the Petitioner's protest letter dated 01.09.2025 against the Respondent's contention that the Petitioner's subsequent conduct, including seeking release of the Security Deposit by letter dated 11.01.2025, is inconsistent with such protest; these are matters going to the merits of the dispute and the credibility of rival contentions, properly falling within the domain of the Arbitral Tribunal.

23. This Court has considered the judgments cited on behalf of the Respondent, but is of the view that the distinguishing feature in the present case is not the timing alone, but the existence of specific, particularized documentary material. In both ***ONGC Mangalore Petrochemicals*** (supra) and ***Hindusthan Builders*** (supra), *t*he plea of coercion/duress was found to be a bald assertion, wholly unsupported by any material placed on record. In the present case, by contrast, the Petitioner has placed on record a specific letter dated 01.09.2025 addressed to named officers of the Respondent, expressly recording that the final bill and No Claim Certificate were accepted 'under protest' and 'without prejudice.' While this letter admittedly comes nearly ten months after the final bill and completion certificate, a delay that this Court does not treat lightly, and which will bear on the ultimate merits, its very existence, coupled with the Respondent's non-disclosure of the same in the Affidavit-in-Opposition, raises triable questions of fact as to timeliness, voluntariness, and effect, which this Court considers more appropriate for determination by the Arbitral Tribunal than for summary resolution at the Section 11 stage.

24. It would also be apposite to refer to the pronouncement of a three-Judge Bench of the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning,*** reported in ***(2024) 12 SCC 1***, wherein, after tracing the entire body of precedent on the point, it was authoritatively held that the scope of enquiry at the stage of Section 11 of the Act is confined to examining the *prima facie* existence of the arbitration agreement, and nothing else. The Hon'ble Supreme Court expressly disapproved of the "eye of the needle" and "*ex facie* meritless" tests as being out of step with the principles of modern arbitration, observing that even such limited tests require the referral court to examine contested facts and weigh *prima facie* evidence, and thereby intrude into territory properly belonging to the Arbitral Tribunal. It was further held that parties may be referred to arbitration even where the contract is stated to have been discharged by way of a full and final settlement or a discharge voucher/no-claim certificate, if the party executing the same alleges that it was procured by fraud, coercion, or undue influence; the referral court ought to decline reference on this ground only in the exceptional case where such a plea is, on its face, frivolous and devoid of merit, and should otherwise leave the question to be determined by the Arbitral Tribunal upon evidence.

25. Applying the aforesaid principle, this Court is of the view that the Petitioner's plea, particularly in view of the letter dated 01.09.2025, that the final bill and No Claim Certificate dated 25.10.2024 were accepted "under protest" and "without prejudice" on account of financial pressure, cannot be said to be *ex facie* frivolous or devoid of merit, particularly given the existence of a specific, contemporaneous-in-form document to that effect. Whether the said letter was genuinely occasioned by duress, whether it was timely and adequate to keep the claims alive, and what bearing the Petitioner's subsequent conduct in seeking release of the Security Deposit has on that question, are all matters requiring appreciation of contested facts and evidence. In view of the law laid down in ***Krish Spinning*** *(supra)*, this Court refrains from conducting any such detailed evidentiary enquiry at the referral stage, and leaves these questions to be determined by the learned Arbitral Tribunal.

26. In view of the observations and grounds recorded hereinabove, this Court is of the considered opinion that the disputes sought to be referred arise out of the Contract Agreement No. 39/HQ/KGP/2020-21 dated 28.08.2020, and are covered by the arbitration clause contained therein. Accordingly, this Court is of the view that the present case is a fit one for the appointment of an arbitrator under Section 11(6) of the Act.

27. This Court, therefore, appoints Mr. Amitesh Banerjee, Adv. (Mob. No. 9830053066), as the sole arbitrator to adjudicate the disputes and differences that have arisen between the parties arising out of the Contract

Agreement No. 39/HQ/KGP/2020-21 dated 28.08.2020, including the claims raised by the Petitioner vide letter dated 05.01.2026.

28. The learned Sole Arbitrator shall enter upon the reference making the disclosure in terms of Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.

29. The learned Sole Arbitrator shall fix his remuneration in terms of the Fourth Schedule of the Act or as may be agreed between the parties.

30. It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues, including the effect of the No Claim Certificate and the Completion Certificate, are left open to be urged before the learned Sole Arbitrator, who shall decide the same in accordance with law.

31. With the aforesaid directions, the present petition stands allowed.

. **(GAURANG KANTH, J.)**

SAKIL AMED (P.A.)