

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 08.06.2026
DELIVERED ON: 12.06.2026**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 153 OF 2025

**M/S. MHPL INFRA JV AND ORS.
VERSUS
RITES LIMITED AND ANR.**

Appearance:

**Mr. Pranit Bag, Adv.
Mr. Anuj Kumar Mishra, Adv.
Mr. Balaram Patra, Adv.**

..... for the petitioners

**Mr. Shounak Mukhopadhyay, Adv.
Mr. Supriyo Gole, Adv.
Mr. Aishwarya Kumar Awasthi, Adv.**

..... for the respondents

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The Petitioners have preferred the present Petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in connection with the Contract dated 26.08.2021 concerning railway infrastructure works connected with the Buxar Thermal Power Project at Chausa, Bihar.
- 2.** The Respondent No. 1 on behalf of Respondent No. 2 invited tender for *'Earthwork in Railway formation, blanketing, construction of RCC Box Culverts, Buildings, FOB, structural steel works, Track Linking including supply of Track Ballast, Points and crossings, P-way fittings & fixtures etc*

excluding supply of rails and PSC Sleepers (Package-III) in connection with Project Management Consultancy Services for rail infrastructure for Buxar Thermal Power Project at Chausa, Buxar, Bihar(Inside Plant and in Railway Land)'. The Petitioner No. 1, a joint venture constituted by Petitioner no. 2 & 3, was declared successful in the bidding process. Consequently, the Respondent No. 1 on behalf of Respondent No. 2 issued a letter of acceptance dated 15.04.2021 which was subsequently corrected on 02.06.2021 to reflect the name of the contracting entity. Subsequently, an agreement dated 26.08.2021 was executed between the parties for execution of the said work.

- 3.** Pursuant thereto, the Petitioners mobilized their resources and commenced the performance of their contractual obligations. The petitioners contend that during execution of the project, various difficulties arose, including alleged non-availability of continuous work fronts, delays in handing over portions of the site, delay in approval of drawings, issues relating to storage and stacking areas, and delayed release of certain payments. The petitioners rely on various communications exchanged between the parties in support of their contention that such circumstances affected the progress of the work and resulted in additional expenditure and losses. The respondents, on the other hand, are stated to have attributed the delay in execution of the project to the petitioners and to have maintained that the petitioners failed to mobilise adequate resources and execute the work in accordance with the contractual schedule. Correspondence was exchanged between the parties from time to time regarding the progress of the work, the causes for delay and the measures required for completion of the project.

- 4.** Owing to the continuing difficulties and the inability to execute the project in accordance with the contractual schedule, the petitioners sought foreclosure of the contract from March 2022 onwards through communications issued to the respondents. The respondents, however, did not agree to such foreclosure and instead required the petitioners to seek extensions of time for completion of the work.
- 5.** The petitioners state that despite several meetings and exchanges of correspondence between the parties, the disputes remained unresolved. According to petitioners, substantial monetary claims have arisen on account of idling of resources, prolongation costs, delayed payments, wrongful actions on the part of the respondents and the possibility of forfeiture of the Earnest Money Deposit and invocation of contractual securities. The petitioners contend that these constitute arbitrable disputes arising out of and relating to the contract and require adjudication by an arbitral tribunal.
- 6.** Hence, disputes and differences have arisen between the parties in relation to execution of the contract and the respective rights, obligations and liabilities of the parties thereunder. The petitioners invoked arbitration by issuing a notice dated 24.07.2024 under Section 21 of the Arbitration & Conciliation Act, 1996 as per Clause 25 of the GCC. The respondents, by their reply dated 08.08.2024 disputed the manner of invocation and maintained that the contractual procedure governing resolution of disputes had not been complied with.
- 7.** The petitioners had initially approached the Delhi High Court seeking appointment of an Arbitrator. The said proceedings were disposed of vide order dated 04.02.2025 with liberty to approach the appropriate forum.

Pursuant thereto, the present petition has been filed before this Court seeking constitution of an arbitral tribunal in terms of the arbitration agreement contained in the contract.

Submission on behalf of the Petitioners

8. Mr. *Pranit Bag*, Learned Counsel for the Petitioner submits at the outset that there is no dispute whatsoever between the parties with regard to the existence of the arbitration clause or the arbitration agreement, the same being contained in Clause 25 of the General Conditions of Contract as amended through Correction Slip No. 3. It is submitted that the only question before this Court is with regard to the appointment of an Arbitrator and that the jurisdiction of this Court under Section 11(6) read with Section 11(6A) of the Arbitration and Conciliation Act, 1996 is squarely attracted. Learned Counsel draws the attention of this Court to the notice issued under Section 21 of the Act dated 24.07.2024 issued under Section 21 of the Act, duly received by the Respondents and which comprehensively sets out the disputes between the parties. It is submitted that the said disputes relate, *inter alia* to the alleged failure of the Respondents to hand over the work-front despite repeated communications, the refusal of the Respondents to permit foreclosure of the contract when sought by the Petitioner, and the eventual descoping of the entire work by the Respondents, all of which have, accordingly to the petitioner given rise to legitimate and subsisting claims for damages Petitioner.
9. It is further submitted that the two objections raised by the Respondents to the maintainability of the present petition are wholly untenable and liable to be rejected. Insofar as the objection that the procedure prescribed

under Clause 25 of the agreement has not been followed is concerned, it is submitted that the said pre-arbitral procedure is designed for disputes arising in the course of execution of works relating to technical matters such as quality, specifications, drawings and workmanship, and has no application to the present case where the disputes arise not from the execution of work but from the complete failure of the Respondents to provide the work-front, their refusal to permit foreclosure of the contract, and the consequential descoping of the work giving rise to claims for damages. As regards the objection that Clause 25(6) bars arbitration for claims exceeding Rs. 2 Crores, it is submitted that no contractual clause can operate to oust the jurisdiction of an Arbitral Tribunal in respect of otherwise arbitrable disputes. According to the petitioners, any such restriction being contrary to law and public policy cannot be given effect to. The Respondents cannot be permitted to rely upon such a clause as a shield to deny the Petitioner access to their legitimate legal remedy.

- 10.** It is further submitted that even if the Respondents have any objection with regard to procedural compliance, the arbitrability of any particular claim, or the valuation thereof, the objections are required to be raised before and adjudicated by the Arbitral Tribunal itself in terms of the principle of *Kompetenz-Kompetenz* as enshrined under Section 16 of the Act, 1996. It is contended that this Court while exercising jurisdiction under Section 11 of the Act, is not required to undertake any detailed examination of such objections. In support of these submissions, Learned Counsel places reliance upon the decision of the Hon'ble Supreme Court in ***Office of Alternative Architecture vs. Ircon Infrastructure***, reported as **2025 SCC OnLine SC 1098**, the decision of the Hon'ble Madras High

Court in ***Sivaswathi Construction Pvt. Ltd. vs. The Superintendent Engineer, PWD, WRO***, reported as **2017 SCC OnLine Mad 33663**, and the decision of the coordinate bench of this Court in ***Emarati Projects & Ors. vs. SK Refeek Ali alias Sekh Rafik, reported in A.P. (COM) 472/2024***, in support of the proposition that all objections as to procedure, scope, and arbitrability are matters to be considered and decided by the Arbitral Tribunal and cannot a ground for refusal to appoint an Arbitrator at this stage.

- 11.** In view of the aforesaid submissions, Learned Counsel for the Petitioner humbly prays that this Court be pleased to appoint a fit and proper person as Sole Arbitrator to adjudicate the disputes and differences between the parties in terms of Clause 25 of the Special Conditions of Contract, as amended by Correction Slip No. 3, read with the Agreement dated August 26, 2021 and the General Conditions of Contract for RITES.

Submission on behalf of the Respondent

- 12.** Learned Counsel for the Respondent submits at the outset that the disputed portion of the work has already been descoped and that the Respondents are open and willing to settle the disputes between the parties. It is submitted that pursuant to such descoping, certain formalities are required to be completed by the Petitioner for the purposes of settlement. However, according to the respondents, the Petitioners have yet to complete the said formalities despite the Respondents' willingness to resolve the matter amicably. It is submitted that the Respondents remain open for settlement even at this stage.
- 13.** On merits, Learned Counsel for the Respondent submits that as per the terms of the contract between the parties, there is no scope for reference of

disputes to arbitration where the value of the claim exceeds Rs. 2 Crores. It is submitted that the claims of the Petitioners as set out in the notice issued under Section 21 of the Act, admittedly exceed Rs. 2 Crores. Accordingly, it is contended that, having regard to the contractual arrangement between the parties, the present petition seeking appointment of an Arbitrator is not maintainable and is liable to be rejected on this ground alone.

- 14.** Learned Counsel for the Respondents further submits that the notice issued by the Petitioners, purportedly under Section 21 of the Arbitration and Conciliation Act, 1996 is not valid in law and does not satisfy the requirements either of the Act or of the contract between the parties. It is submitted that the agreement between the parties specifically prescribes a particular format for issuance of such a notice, being the format as set out in Annexure F2 to the contract, and that the any notice invoking arbitration is required to be issued strictly in the said prescribed format. It is submitted that the notice dated 24.07.2024 relied upon by the Petitioners is not in conformity with the format prescribed under Annexure F2 of the agreement and therefore, does not constitute a valid notice under Section 21 of the Act, rendering the present petition premature and not maintainable.

Legal Analysis

- 15.** This Court has heard the arguments advanced by learned counsel for both the parties and has perused the documents and Judgments relied upon by the parties.
- 16.** The scope of examination of a referral court under Section 11 of the Arbitration and Conciliation Act, 1996 has been authoritatively and

conclusively settled by the Hon'ble Supreme Court. The Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. vs. Krish Realty Pvt. Ltd. & Ors.** reported as **2024 SCC Online SC 1754** and **Office of Alternative Architecture vs. Ircon Infrastructure** (supra) has categorically held that at the stage of appointment of an Arbitrator under Section 11, the referral court is required to confine its examination to two aspects only, namely, first, whether there exists a valid arbitration agreement between the parties, and second, whether the application for appointment of an Arbitrator has been filed within the period of limitation, i.e., within three years from the issuance of the notice under Section 21 of the Act. The Hon'ble Supreme Court has unequivocally held that the referral court is not required to, nor ought to, venture into any examination of the merits of the disputes, the arbitrability of any particular claim, the validity of any procedural pre-condition prescribed under the contract, or any other objection going to the root of the matter. All such issues fall exclusively within the domain of the Arbitral Tribunal and are liable to be decided by the Tribunal in exercise of its jurisdiction under Section 16 of the Act, in accordance with the principle of *Kompetenz-Kompetenz*. The settled legal position is that the referral court at the stage of considering an application under Section 11 of the Act, must adopt a minimal interference approach and have all objections as to the scope, validity, and procedure of arbitration to be adjudicated by the Arbitral Tribunal.

- 17.** Applying the aforesaid settled legal position to the facts of the present case, this Court finds that both the conditions precedent for exercise of jurisdiction under Section 11 of the Act are satisfied. As regards the first condition, namely the existence of a valid arbitration agreement, it is an

admitted position between the parties that an arbitration clause exists in Clause 25 of the General Conditions of Contract as amended through Correction Slip No. 3 of the agreement dated August 26, 2021. No dispute has been raised by either party with regard to the existence of the arbitration agreement itself, and this Court therefore need not undertake any further examination on this aspect. As regards the second condition, namely limitation, the notice under Section 21 was issued by the Petitioner on 24.07.2024, and the present petition has been filed in February 2025, which is well within the period of three years from the date of issuance of the said notice. The petition is, therefore, not barred by limitation.

- 18.** This Court further finds that the objections raised by the Respondents, namely that the claims exceed Rs. 2 Crores and are therefore outside the scope of arbitration under the contract, and that the Section 21 notice is not in the prescribed format of Annexure F2 of the agreement, are objections relating to the merits and the procedural validity of the arbitration proceedings and are not matters that fall within the limited scope of examination of this Court at the stage of Section 11 of the Act. In terms of the law as settled in ***Krish Realty (supra)*** and ***Office of Alternative Architecture vs. Ircon Infrastructure (supra)***, such objections are required to be raised before and adjudicated by the Arbitral Tribunal under Section 16 of the Act. As held by the Hon'ble Madras High Court in ***Sivaswathi Construction Pvt. Ltd. vs. The Superintendent Engineer, PWD, WRO***, reported as **2017 SCC OnLine Mad 33663**, contractual pre-conditions and procedural requirements prescribed under government works contracts cannot be used as a tool to deny a party access to arbitration, and the validity and applicability of such conditions

are matters for determination by the Arbitral Tribunal. Similarly, the coordinate bench of this Court in ***Emarati Projects & Ors. vs. SK Refeek Ali alias Sekh Rafik, A.P. (COM) 472/2024***, has taken a consistent view that objections as to procedural compliance and the scope of the arbitration clause are not to be examined at the stage of appointment of an Arbitrator. Insofar as the Respondent's submission that the Petitioners are yet to complete formalities for settlement consequent upon descoping of the work is concerned, this Court notes that the Respondents' own statement that they remain willing to settle the matter is, in itself, an acknowledgment of the existence of live and subsisting disputes between the parties. Such circumstances, further fortifies the case for appointment of an Arbitrator. Needless to observe, any settlement efforts may be constituted and be explored by the parties even during the pendency of the arbitral proceedings.

- 19.** In view of the aforesaid legal analysis, this Court is satisfied that the present case is a fit case for appointment of an Arbitrator under Section 11(6) read with Section 11(6A) of the Arbitration and Conciliation Act, 1996, and that all objections raised by the Respondents are matters to be agitated before and decided by the Arbitral Tribunal.
- 20.** In view of the aforesaid findings, this Court hereby appoints Mr. Sabir Ahmed, Adv. (Mob. No. 9007434193) as the Sole Arbitrator to adjudicate all disputes and differences between the parties.
- 21.** The appointment of the Sole Arbitrator shall be subject to compliance with the disclosure requirements under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Sole Arbitrator shall be entitled to fix

his/her remuneration in accordance with the provisions of the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

- 22.** The learned Sole Arbitrator shall be at liberty to consider and decide all objections raised by any party including but not limited to the questions of maintainability, jurisdiction, and all other jurisdictional challenges as preliminary issues in accordance with Section 16 of the Act, after affording full and complete opportunity of hearing to all parties.
- 23.** All questions on the merits of the disputes are expressly left open to be decided by the learned Sole Arbitrator in accordance with law. It is clarified that no observations made by this Court in the present judgment shall be construed as an expression of opinion on the merits of the disputes between the parties or on the jurisdictional objections to be raised before the Arbitral Tribunal. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the rules framed thereunder.
- 24.** With the aforesaid directions, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

(GAURANG KANTH, J.)