S. No. 3

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**
**AT JAMMU**

**CJ Court**

Case No: Arb P No. 75/2026

M/S Dee Ess Construction Co. …Petitioner(s)/Appellant(s)

Through: Mr. Priyanshu Sharma, Advocate

v/s

Union of India and others …. Respondent(s)

Through: Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI with

**CORAM: HON'BLE THE CHIEF JUSTICE**

**ORDER (ORAL)**
**06.11.2026**

01. The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short '**the Act**') seeking appointment of an Arbitrator.

02. The petitioner firm being a partnership concern, having its principal place of business at Channi Himmat, Jammu carrying out the contract works pertaining to the Military Engineer Services (MES), having considerable experience and expertise in the execution of engineering and infrastructure works was allotted **"Provn of Officers MD ACCN under GE (P) Nagrota**" vide **CA No. CEUZ/NGT/24/2024-25** dated 07.12.2024 for a sum of ₹3,60,00,000/- based on IAFW-2249 . The duration for completion of the work was 18 months. Subsequently, the work order dated 23.04.2025 came to be issued in favour of the petitioner. Vide letter dated 13.03.2025, Bank Guarantee bearing No.03431PBG2503001 dated 12.03.2025 valid up to 31.03.2029 was issued towards the compliance of tender conditions. The contract was bifurcated into three distinct phases namely Phase-I, Phase-II and Phase-III.

03. It is submitted by counsel for the petitioner that while executing the work under Phase-I, the petitioner-Company discovered 'Water Well' situated

at the site causing impediment for the petitioner-Company. The same was duly informed to respondents vide letter No. CEUZ/NGT/24/2024-25/04 dated 20.05.2025. A formal approval vide letter No. 8024/CEUZ/NGT/24/2024-25/42/E8 dated 03.06.2025 was conveyed to the petitioner annexing the Site Level Sheet. For the said Phase-I completion certificate vide letter No. 8024/CEUZ/NGT/24/ 2024-25/46/E8 dated 09.06.2025 was issued in favour of the petitioner.

04. It is further submitted that executing the work under Phase-II same impediment was conveyed to the respondents vide letter No. CEUZ/NGT/24/2024-25/09 dated 18.06.2025. Resultantly, the respondents conveyed a meeting on 28.06.2025 vide letter No. CEUZ/NGT/24/2024-25/11 in which verbal directions were issued to shift both the buildings by approximately 4.5 meters backwards so as to accommodate the water well within the proposed garage area.

05. It is further submitted that in furtherance of execution of the contractual work under Phase-II, the petitioner-company duly prepared and submitted the technical yardstick vide letter No. CEUZ/NGT/24/2024-25/12 dated 30.06.2025 for mandatory review and approval by the department, which was also reminded vide letter No. CEUZ/NGT/24/2024-25/19 dated 18.08.2025.However, the respondents remained inactive despite being fully aware of prevailing rainfall conditions, red alerts, flash floods and advisories issued by the Government affecting the project and issued a letter No. 8024/CEUZ/NGT/24/2024-25/106/E8 dated 29.08.2025 threatening coercive action against the petitioner under Condition 54. Thereafter, in a meeting held on 19.11.2025, the CWE directed the suspension of the work due to rising groundwater levels at site, which was contrary to the General Conditions of Contract (GCC). Consequently, petitioner-Company being ready to execute the work, respondents vide Site Order No. 4 dated 26.11.2025 directed suspension of work.

06. It is averred by the petitioner-Company that the work was held up on account of the department was reconsidering and revising the structural design due to prevailing site conditions when the work remained suspended from 19.11.2025 falling within the Condition 9 of the GCC IAFW-2249.

07. Respondent No.3 vide letter No. 8024/CEUZ/NGT/24/2024-25/201/E8 dated 08.01.2026 confirmed that the works relating to building No.1 and building No.2 would remain on hold. Petitioner-Company vide several communications requested for the resumption of the work. Finally, petitioner-Company issued communication treating contract as abandoned due to non-response of respondents. Due to inaction of the respondents disputes arose on account of escalation and cost adjustment due to prolonged suspension and market escalation.

08. Petitioner-Company approached the court of learned Additional District Judge (Commercial Court), Jammu granted interim protection under Section 9 of Arbitration Act restraining encashment of Bank Guarantee and learned court directed the parties to initiate arbitration within 90 days.

09. It is further submitted that petitioner-Company despite several requests made to the respondents regarding the resolution of the dispute that arose between the parties, the respondents did not accede to any of the requests and the petitioner finally vide communication dated 23.05.2026 embedding Condition 70 of the General Conditions of Contract (GCC) forming part of IAFW-2249 issued a notice to the respondents seeking appointment of an arbitrator.

10. Heard learned counsel for the parties.

11. Thus, having argued the matter at some length and in the given circumstances, learned counsel for the respondents, as always, fairly submits that the existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 23.05.2026, is not disputed let an arbitrator be appointed. But, since the claim that is sought to be made by the petitioner is vehemently disputed/ denied, it is submitted that respondents be granted liberty to raise all possible pleas/ objections before the arbitral tribunal/ arbitrator in this regard.

12.Accordingly, in the wake of the position sketched out above and in terms of the statements made by the learned counsel for the parties, the petition is allowed. And, with consent of learned counsel for the parties, **Sh. Raj Kumar Sarkar, CE Railways,** is appointed as the sole arbitrator. Who shall proceed

with the matter in accordance with the provisions of the Act. And to make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties. The respondents are at liberty to raise all the objections as regards the subject matter before the learned Arbitrator.

12. Registry to send a copy of this order to the learned arbitrator.

**(DR. PUSHPENDRA SINGH BHATI)**
**CHIEF JUSTICE**

**JAMMU:**
**06.11.2026**
Pawan Chopra, Secy

HIGH COURT
JAMMU & KASHMIR AND LADAKH



Pawan Chopra
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I attest to the accuracy and
integrity of this document