

GAHC010018422025



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./8/2025

M/S RAITANI ENGINEERING WORKS PVT LTD
A COMPANY CONSTITUTED UNDER THE INDIAN COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT CAMPUS OF M M
CHOUDHURY, P B ROAD, REHABARI, GUWAHATI, ASSAM, PIN-781008
REPRESENTED BY ONE OF ITS DIRECTORS SRI MAYUR RAITANI, S/O SRI
ANAND RAM RAITANI, R/O 4TH FLOOR, NIRMAL SAGAR APARTMENT,
OLD POST OFFICE LANE, REHABARI, GUWAHATI-781008, DIST- KAMRUP
(M), ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE GENERAL MANAGER (CONSTRUCTION), N.F.
RAILWAYS, MALIGAON, GUWAHATI, DIST- KAMRUP (M), ASSAM, PIN-
781011

2:THE GENERAL MANAGER (CONSTRUCTION)
N. F. RAILWAYS
MALIGAON
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-781011

3:THE CHIEF ENGINEER/CON-I
N.F. RAILWAYS
MALIGAON
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-781011

4:THE DEPUTY CHIEF ENGINEER/CON-I
N.F. RAILWAYS
MALIGAON
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-78101

Advocate for the Petitioner : MR. A BISWAS, S PAUL,MR R KALITA,MR P K BASU

Advocate for the Respondent : DY.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

04.12.2025

Heard Mr. A. Biswas, learned counsel for the petitioner and Mr. H Gupta, learned CGC appears for the respondents.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the petitioner.

3. The petitioner company is a private limited company, namely, M/s Raitani Engineering Works Pvt. Ltd incorporated on the companies of 1956, having its registered office in Rihabari, Guwahati. The petitioner is engaged in various civil works, constructions under various state and central departments, including the railways. In the present writ petition, the petitioner is represented by one of its directors who is duly authorised. A Contract Agreement No.CON/LGM-SCL/1701 was executed by and between the petitioner and the respondents on

12.04.2013. The work was duly completed by the petitioner and the final completion certificate was also issued on 31.10.2015, by the Deputy Chief Engineer/ CON/ IV/ SCL, NF Railway. The said certificate reflects that physical progress of 100% work has been completed and part of the payment has already been made and the final bill is under process. After the execution of the contract, according to the petitioner, certain disputes have arisen and accordingly, a communication dated 03.05.2024 was issued to the Chief Engineer/CON/ I, relating to the final claim, amount of Rs.1,17,39,847/- (Rupees One Crore Seventeen Lakh Thirty Nine Thousand Eight Hundred Forty Seven only) arising out of the Contract Agreement dated 12.04.2013. The final claim raised by the petitioner has been reflected in the said communication. The claims of the petitioner have been shown under six different heads. Pursuant to the said communication dated 03.05.2024, the Railways, informed the petitioner by communication dated 18-06-2024, whereby their final PVC Bill was returned for re-calculation as per clause 40.5 of the contract agreement. This rectified PVC Bill was again subsequently submitted on 24.06.2024. However, since these claims were not redressed, the petitioner issued a notice dated 05.10.2024 to the respondents under the provisions of Arbitration and Conciliation Act, 1996. This was replied to by the Deputy Chief Engineer/ CON/HQ by communication dated 23-01-2025 that this notice could not have been issued without first

resorting to Clauses-63 and 64 of the General Conditions of Contract in the said Agreement. Under such circumstances, the petition under 11(6) of the Arbitration and Conciliation Act, 1996 has been filed.

4. Learned counsel for the petitioner submits that the petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, inasmuch as, that, in spite of the disputes having arisen and the notices having been issued, the respondents have failed to refer the matter to arbitration as per the terms of the contract and therefore, this application is filed for appointment of an arbitrator and referring the dispute to be resolved by appointment of a sole arbitrator.

5. Per contra, Mr. H Gupta learned CGC, on the other hand, disputes the contentions raised by the petitioner. The respondents have contested the matter by filing their affidavit-in-opposition. In the affidavit-in-opposition, the respondent no.4 contends that the provisions under Clauses 63 and 64 of the GCC have not been followed by the petitioner and therefore, this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is premature at this stage and should therefore be rejected relegating the petitioner to resort to the procedure prescribed under Clauses 63 and 64 of the GCC.

6. Learned counsel for the parties have been heard. Pleadings available on

record have been perused.

7. The Clause 63 and 64(1) of the Contract Agreement reads as under:

“Clause 63: Matters finally determined by the Railway=All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall within 120 days after receipt of the contractor’s representation make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in clauses 8, 18 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2), 62(1) to (xiii) (B) of General Conditions of Contract or in any clause of the special conditions of the contract shall be deemed as ‘excepted matters’ (matters not arbitrable) and decision of the Railway authority, thereon shall be final and bindings on the contractor provided further that excepted matters’ shall stand specifically excluded from the purview of the arbitration clause.

Clause 64(1)(I) Demand for Arbitration:

In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' referred to in clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration.

Clause 64(1)(ii) The demand for arbitration shall specify the matters which are in question or subject of the dispute or difference as also the amount of claim item wise. Only such dispute(s) or difference(s) in respect of which the demand has been

made, together with counter claims or set off, given by the Railways, shall be referred to arbitration and other matters shall not be included in the reference.

Clause 64(1)(ii)(a)- The arbitration proceedings shall be assured to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

b. The claimant shall submit his claim stating the facts supporting the claims along with all relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

c. The railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

d. Place of arbitration:- *The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.*

Clause 64(1)(iii) - No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

Clause 64(1)(iv) - If the contractor(s) does/do not prefer his/their specific, and final claims in writing, within a period of 90 days of receiving the limitation from the Railways that the final bill is ready for payment, he/they will be deemed to have waved his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

8. A perusal of these clauses reveal that when disputes or differences of any kind arises out of or in connection with the contract whether during the

progress of the work or after completion, then they shall be referred by the contractor to the General Manager and the General Manager shall within 120 days after receipt of the contractor's representation make and notify decisions on all matters referred to by the contractor in writing then the contractor shall after 120 days but within 180 days of his presenting his final claim on the disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

9. There is no dispute that the contract work allotted to the petitioner has been executed and completion certificate has also been issued by the employer Railways. By the communication dated 03.05.2024 the petitioner has raised the dispute before the Chief Engineer/CON/I. The claims raised under six different claim heads amount to a total of Rs.1,17,39,847/-. This was replied to by the respondent Railway by communication dated 18.06.2024 requesting for re-calculation of the PVC Bill. This rectified PVC Bill again came to be submitted on 24.06.2024. As such, if under provision of Clause 63, the 120 days is to be calculated with effect from 24.06.2024 then the same on 24.10.2024.

10. In terms of Clause-63 read with Section 64 once the Railways fail to resolve the dispute then the contractor will be required to raise the demand for arbitration under section 11 of the Arbitration and Conciliation Act. The

objection raised by the Railways that under, Clauses-63 and 64, the contractor needs to raise the dispute and refer it to the General Manager has not been complied with, does not merit acceptance by this Court. By communication dated 03.05.2024, it is seen that the same was addressed to the Chief Engineer/CON/I of the Railways and which was replied to by the Deputy Chief Engineer/CON-II by the communication dated 18-06-2024, requiring the contractor/ petitioner to submit a rectified PVC Bill. This rectified PVC Bill was also submitted on June 24, 2024, to the Deputy Chief Engineer, CON-II.

11. A plain reading of the communications dated 03.05.2024 as well as the 24.06.2024 reveal that the contractor petitioner had ventilated his grievance for non-releasing his final Bill, final PVC Bill, non-release of security deposits, whereby they have been compelled to get into litigation for getting their legitimate dues. Therefore, the tenor of these two communications clearly reveals that the petitioners are aggrieved by non-release of their final bills and other dues specified in the said communication. This, in the opinion of the Court, is a clear indication that the petitioner has raised a dispute for non-release of the dues. The objection raised by the respondents that there is no specific reference to the term "*dispute or differences*" in the said communication and therefore, the contention of the respondents that it cannot be considered to be a dispute arising under Clause-63, read with Clause-64, cannot be accepted.

The objection raised by the Railways is essentially to the form of the communication issued and not to the intention of the parties as is distinctly reflected in the agreement executed by and before the parties.

12. Similar objection is raised to the communication dated 05. 10.2024 under which the petitioner had issued a notice under Section 11 of Arbitration and Conciliation Act, 1996. The objection raised by the Railways is that this is not a notice contemplated under the provisions of Arbitration and Conciliation Act, 1996, as the notice is contemplated under Section 21 and not under Section 11 of the Arbitration and Conciliation Act, 1996. This objection made by the Railways is also required to be overruled, inasmuch as, a wrong quotation of a section cannot be used to throw out the claims of a contractor when the tenor of the notice reflects clearly that the contractor has raised his disputes under the provisions of Arbitration and Conciliation Act, 1996.

13. It is no longer *res integra* that a Referral Court's jurisdiction is primarily to inspect the existence of a valid arbitration agreement. In the facts and circumstances of the case, there is no dispute that the agreement executed by and between the parties by the agreement no. CON/LMG-SCL/1701 dated 12.04.2013 does contain an arbitration clause in the event of any disputes arising by and between the parties. In fact, under Clause-45 of the said

Contract, there is a clear provision that settlement of disputes shall be governed by arbitration by the Clauses-63 and 64 of the GCC. The submissions of the claims by the petitioner, by the communication dated 03.05.2024, and the subsequent rectified or revised PVC Bill dated 24.06.2024, having been addressed to the Chief Engineer/ Construction/I and Deputy Chief Engineer/ Construction - II, cannot be faulted with as being violative of the provisions of Clause-63 that the same ought to have been addressed to the General Manager, N.F. Railways inasmuch as, it was available to the concerned officers to refer these matters to the General Manager, if so required. However, it is seen that pursuant to the first communication dated 03.05.2024, it was the Deputy Chief Engineer/CON-II/MLG who replied to the petitioner requesting them for filing revised PVC Bill.

14. That apart, the contract agreement itself was signed and executed by the Deputy Chief Engineer, Construction. The agreement on behalf of the railways was executed by the Deputy Chief Engineer/C/Tender/NF Railway, Maligaon on 12-04-2013. Therefore, the Court is of the view that under the circumstances, the prescriptions under Clause 63 has been substantially complied with and the same not having yielded any result towards settlement of the disputes, the matter was required to be referred to arbitration on the basis of the communication dated 05-10-2024.

15. The principles governing the scope of enquiry by the Referral Court in matters of arbitration has been restated in the judgment of the Apex Court in SBI General Insurance Co. Ltd. vs. Krish Spinning and Another reported in (2024) 12 SCC 1. After a careful perusal of these parameters set by the Apex Court, which is binding on all High Courts, including this Court, it is held that there exists a valid arbitration agreement between the parties wherein it is agreed that in the event of any disputes and differences arising by and between the parties, the matter has to be referred to arbitration.

16. In case of any disputes, the matter is to be referred to arbitration of a sole arbitration in terms of clause 64.3 (a)(i) and 64.3 (a) (ii)., where the total value of all claims does not exceed Rs.10 lakhs. Where the cases are not covered under Clause 64 (3) (a) (ii), it is specified that the Arbitral Tribunal shall consist of three gazetted railway officers not below the J.A. Grade or two Railway Gazetted Officers not below J.A. Grade and a Retired Railway Officer not below the rank of S.A.G. Officer as arbitrators. Therefore, since the claims raised by the petitioner exceed more than Rs.10 lakhs, the provisions of Clause- 64 (3) (a) (ii) are applicable subject to the directions and parameters of the Apex Court laid down in ***Central Organization for Railway Electrification Vs. ECI SPIC SMO MCML (JV)***, reported in (2025) 4 SCC 641 wherein the constitution Bench of the Apex Court has held that in view of the amendments

brought to the Arbitration Act under Section 12.5 where the contractor does not consent to appointment of curated arbitrators from the curated panel mentioned by the employer the Railways in the present case, then the referral court will have no option but to appoint appropriate arbitrators.

17. In the facts of the present case and considering the submissions made, learned counsel appearing for the petitioner submits that the petitioner has not waived the right permitting the Railways to appoint arbitrators from the curated panel maintained.

18. In such circumstances, under the provisions of the powers conferred under Section 11 of the Arbitration and Conciliation Act of 1996, this Court therefore appoints Sri. Mrinmoy Kumar Bhattacharjee, retired District and Sessions Judge of Assam and Shri Ajoy Chandra Bordoloi, Retd. Commissioner & Special Secretary, PWD, Govt. of Assam from the panel of arbitrator issued by the Gauhati High Court by Notification No.29 dated 21.05.2024.

19. The two prospective arbitrators appointed shall be notified by the Registry of the Court and certified copy of the order shall be placed before them by the respective parties.

20. These appointments are prospective subject to furnishing of written declaration as required under Section 12(1) of the Arbitration and Conciliation

Act, 1996.

21. The appointments made to the prospective arbitrators shall be confirmed on receipt of the written declaration from the prospective arbitrators. Once the appointments of the prospective arbitrators are confirmed, they will be appointed the pending arbitrator.

22. List the matter again on 17.12.2025.

JUDGE

Comparing Assistant