



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL MISC PETITION NO.100023 OF 2024

BETWEEN:

KLEIN CONSTRO DEVELOPMENT PRIVATE LIMITED,
A PRIVATE LIMITED COMPANY REGISTERED
UNDER THE COMPANIES ACT 2013 HAVING
ITS REGISTERED OFFICE AT: 116, PH-II,
VASCON PLATINUM SQUARE, NEAR HYATT HOTEL,
VIMAN NAGAR, PUNE-411014 THROUGH
ITS AUTHORIZED SIGNATORY AND
PRINCIPAL OFFICER MR. ARUN PULLARA.

...PETITIONER

(BY SRI. BHARAT A.NARASAGOUDA, ADVOCATE,
SRI. HARI SHETTY, ADVOCATE AND
SRI. DEEPAK S.KULKARNI, ADVOCATE)

AND:

SHRI KESHAV CEMENTS AND INFRA LIMITED,
A LIMITED COMPANY HAVING
ITS OFFICE AT. "JYOTI TOWERS", 215/2,
KARBHAR GALLI, 6TH CROSS, NAZAR CAMP,
M. VADGAON, BELAGAVI-590005,
THROUGH ITS DIRECTOR SHRI VILAS KATWA.

...RESPONDENT

(BY SRI. PRASHANT F.GOUDAR, ADVOCATE)





THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11 (6) OF ARBITRATION AND CONCILIATION ACT 1996 FOR APPOINTMENT OF SOLE ARBITRATOR, PRAYING TO
A) APPOINT A SOLE ARBITRATOR UNDER SECTION 11 (6) OF ARBITRATION AND CONCILIATION ACT, 1966 FOR COMPOSITE ARBITRATION OF THE DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENTS IN RESPECT OF THE FOLLOWING TWO WORK ORDERS AS PER ANNEXURE 1 AND 2 AS GIVEN BELOW:

- i. WORK ORDER BEARING NO.SKCIL/23-24/001 (ANNEXURE NO.1) DATED 15.06.2023 FOR THE CIVIL WORK.
- ii. WORK ORDER NO.SKCIL/23-24/ 010 PLANT: LOKAPUR AMENDMENT II DATED 08.08.2023 FOR THE MECHANICAL WORK (ANNEXURE-2).

B) PASS AN ORDER AWARDING COSTS IN FAVOR OF THE PETITIONER;

C) PASS SUCH OTHER AND / OR FURTHER ORDERS AS THIS HON'BLE COURT MAY DEEM FIT AND PROPER IN THE FACTS AND CIRCUMSTANCES OF THE PRESENT CASE.

THIS CIVIL MISCELLANEOUS PETITION HAVING BEEN HEARD AND RESERVED ON 19.01.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV ORDER

The present Civil Miscellaneous Petition is filed seeking the following relief:

"RELIEF : Therefore in the interest of justice it is humbly prayed that;

a) This Hon'ble Court be pleased to appoint a Sole Arbitrator u/Sec-11(6) of Arbitration & conciliation Act, 1966 for composite arbitration of the disputes between the Petitioner and the Respondents in respect of the following two work orders; as per Annexure 1 & 2 as given below.

i. Work order bearing No. SKCIL/23-24/001 (Annexure No.1/ Arbitration clause of pg.No 52) dated 15.06.2023 for the Civil work.

ii. Work Order No. SKCIL/23-24/ 010 PLANT: LOKAPUR Amendment II dated 18.08.2023 for the Mechanical work. (Annexure-2/the Arbitration clause at pg.No.113).

b) Pass an order awarding costs in favor of the Petitioner;

c) Pass such other and / or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;"

2. The facts of the case are that on 15.06.2023, a Civil work order was awarded by the respondent to the petitioner for various works in respect of cement plant at Lokapur, Bagalkot District for the value of Rs.7,45,90,879/- and quantity of 14,422 CuM. On 18.08.2023, a separate mechanical work order was awarded by the respondent to the petitioner for works in the



same plant in both the clauses i.e., clause 6 of the civil work order and Clause 5 of the mechanical work order.

3. As the petitioner carried both the civil and mechanical works, he started to realise that the quantity as initially portrayed by the respondent especially in the civil work of pre-heater building was less than the actual quantity impacting the petitioner adversely. In fact, the civil work quantity in the pre-heater reduced to almost 42% to 45%. This severely affected the cash flow of the petitioner and the monthly expenses and the overall finance. The petitioner addressed two mails to the respondent on 10.10.2023 highlighting this major issue. Though the petitioner was carrying out the work full-fledged, there was delay from the respondent in furnishing the details of the total quantity. After much persuasion from the petitioner, the technical consultant of the respondent ultimately furnished the final quantities for civil works. The petitioner there upon found that the quantities mentioned were on the lower side and there was a huge variation than what was mentioned in the work order.



4. The petitioner again ranked up this issue with the respondent and followed it up via email dated 19.10.2023 and attached a variation sheet for the pre-heater civil work quantity showing the actual and work order difference with a mention of the variable cost for the different quantities. The petitioner called upon the respondent to consider this huge difference in quantity which was impacting the petitioner adversely. To resolve this issue, a meeting was held on 30.11.2023 at the project site between the petitioner and the respondent where the senior officials from both the sides were present. The respondent duly acknowledged that there was lesser quantity than what was initially represented. The pre-heater quantity variation was settled at Rs.22 lakhs with the assurance that the overall civil works quantity in concrete works solely would be 8517 Cu M and the billing value would be more than the work order value of Rs.7.45 crores.

5. On several issues, there was an email correspondence between the petitioner and the respondent. The petitioner has narrated several difficulties and what are the problems, several variations and also the email correspondence between the



petitioner and the respondent. Finally, the respondent replied to the last mail on 27.03.2024 of the petitioner stating that they have documented the concerns as agenda for discussion for the meeting to be held on 02.04.2024. The respondent also allied fears of slowing down of work which in fact was not true. On 02.04.2024, a meeting was held at the head office of the respondent in Belgaum. The meeting ended without any fruitful outcome and the petitioner's issue remained unresolved and the respondent not reciprocating in any manner and raking up new issues with which they did not have any problems earlier.

6. The respondent has addressed a notice for non-performance of the contract dated 02.04.2024 and in that they made several false allegations and the said notice is contrary to the terms of the agreement. The petitioner's Director and other senior officials visited the respondent office on 08.04.2024 and the respondent's director seemed to have a pre-determined mind and they were not open to any talks. The petitioner had made all efforts for a resolution and having failed, addressed a detailed reply dated 10.04.2024 to the notice for non-performance of contract dated 02.04.2024 along with the mail.



7. The petitioner having no other option and the third party resolution process having failed there being no consensus on the third party, the petitioner by its notice dated 08.07.2024 invoked the Arbitration clauses of the (i) Work order for the Civil works dated 15.06.2023, Amendment No.1 and of the (ii) Work Order for Mechanical Fabrication and Erection Works, Amendment No.II dated 18.08.2023 for having a composite arbitration are nominated in the name of Mr. P.S. Sekhar, as the Arbitrator for the arbitration proceedings to be conducted in Belgaum City. To the said arbitration invocation notice, the respondent through the head of legal department addressed a reply dated 12.07.2024 to the petitioner with a bare denial. The respondent did not consent for the name of the nominee arbitrator of the petitioner and on the other hand suggested for two other names for third party resolution. This tactic of the respondent not to reply to the suggestion of the name of the petitioner for almost two weeks and thereafter when the arbitration clause is in fact invoked by the petitioner, thereafter coming up with certain nominations for third party resolution, clearly manifests that the respondent is not serious of any resolution and adopting delay tactics.



8. The petitioner by email dated 18.07.2024 replied and pointed to the respondent that the arbitration clause already stands invoked by the petitioner and that the clock cannot be set back. In response to the mail of the petitioner, the respondent addressed a reply on 22.07.2022 asking for a detailed profile of the petitioner's nominee Mr.P.S.Sekhar. Surprisingly, a little later another mail was addressed stating that the parties should mutually discuss the issues before proceeding with the arbitration. The petitioner again pointed out that in any event, in as such as Arbitration Notice already stood invoked by the notice dated 08.07.2024, the respondent cannot try to set the clock back and try to derail the same by falsely contending that they are ready for negotiation or mediation.

9. The petitioner by its mail dated 01.10.2024 duly informed the respondent that it has already filed application under Section 9 of the Arbitration and Conciliation Act, 1996, before the Hon'ble Commercial Court, Belagavi. It is stated that by virtue of the respondent having terminated both the work orders of civil and mechanical contract and the petitioner having invoked the arbitration clause in terms of the work orders with



negotiations between the parties having failed and the parties not even agreeable for the nominee third party for resolution, the dispute will have to be resolved through the process of composite arbitration as mandated in the work orders. The respondent not showing its willingness to the Arbitrator nominated by the petitioner, there is no other option but to prefer this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator and he has been duly complied with all the mandate under Section 11 of the Act.

10. A memo is filed on behalf of the respondent stating that the respondent has sought the approval of retired Justice A.S. Pachapure, High Court of Karnataka, presently at Belagavi and retired Justice H.R.Deshpande, District Judge, presently at Dharwad and retired Justice S.S.Balloli, District Judge, to appoint as arbitrators in the matter.

11. Having heard the learned counsels on either side, perused the material on record. Clause No.6 of the work order reads as follows:



"6. ARBITRATION

- 1. We shall make attempts to resolve the matter by amicable settlement without the intervention of any third party. If negotiations have failed, the next higher management level of each party should be involved in trying to reach an amicable resolution.***
- 2. The dispute cannot be resolved through negotiation, it should be attempted to resolve the dispute by using an independent third party.***
- 3. Thereafter a settlement will be arrived at by the course of arbitration. The jurisdiction shall be Belgaum City."***

12. In the light of the respective contentions of both the parties and the fact that both the parties as per the Arbitration clause want to engage an Arbitrator and the seat of arbitration at ***Belgaum**. This Court having thoroughly examined the annexures annexed to the Civil miscellaneous petition is of the view that the petitioner has fulfilled the mandate provided under Section 11(4) of the Act. Hence, this Court is passing the following:

ORDER

- i. Accordingly, the Civil Miscellaneous Petition is **allowed** by appointing Sri. Justice A.N.Venugopala Gowda, Former Judge, High Court of Karnataka, as the sole Arbitrator to

*Corrected vide Court order dated 02.07.2026

Sd/-
LKJ



arbitrate the dispute between the petitioner and the respondent.

- ii. The said arbitrator would be free to take the aid and advice of any technical person, if so required, at the cost of the parties.
- iii. Registry is directed to forward a copy of this order to Sri. Justice A.N.Venugopala Gowda, Former Judge, High Court of Karnataka, at the earliest.
- iv. All I.As. in this Civil Miscellaneous Petition shall stand closed.

**Sd/-
JUSTICE LALITHA KANNEGANTI**

MEG
CT: UMD
List No.: 1 Sl No.: 1