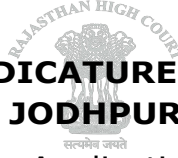




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Arbitration Application No. 17/2025

Prime Civil Infrastructure Private Limited, Having Its Head-Office
At A-203, Gokul Arcade, Swami Nityanand Marg, Ville Parle
(East), Mumbai-400057 Through Its Power Of Attorney Holder
Shri Goutam Jain S/o Shri Bhoor Chand Jain, Aged About 53
Years, Resident Of 85 Vaishali Enclave Near Dps Circle Jodhpur
Raj

-----Petitioner

Versus

Jodhpur Development Authority, Through Its Commissioner,
Jodhpur.

-----Respondent

For Petitioner(s)	:	Mr. Vineet Dave for Mr. Kaushik Dave.
For Respondent(s)	:	Mr. Rajat Dave.

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

29/04/2026

1. Application herein is under section 11 of the Arbitration & Conciliation Act, 1996 with the prayer to appoint a sole arbitrator to decide/ adjudicate upon the dispute between the parties arising out of a Bid Document being EOI/2015-16; NIT No.34 dated 24.11.2015.
2. Case set up in the application is that the Applicant is a private limited company and is engaged in infrastructure development projects throughout Rajasthan. The Government of Rajasthan, through the Jodhpur Development Authority (JDA), invited bids for constructing flats under the Chief Minister's Jan Awas Yojana-2015 (CMJAY) aimed at Economically Weaker Section and Low Income Group categories on government land (Khasra



No. 136, Village-Tanawada, Jodhpur, Phase-I). According to the policy, 75% of the land was to be used for construction, while the remaining 25% was allotted free of cost to the developer as compensation.

2.1 The applicant submitted its bid on 29.02.2016, which was accepted as the lowest responsive bid on 04.07.2016. The applicant was required to submit a layout plan for approval and a bank guarantee worth 1% of the contract value within seven days of receiving the Letter of Acceptance (LoA). The contract became effective from 04.07.2016. The applicant complied by submitting the layout plan and bank guarantee as stipulated.

2.3. On 19.08.2016, the JDA issued the LoA, confirming that the layout and unit building plans were approved by the Local Level Project Approval Committee, and directed the applicant to execute the agreement.

2.4. The applicant commenced work as per the bid documents, which detailed the rights and obligations of both parties, including JDA's obligation to maintain financial capacity to fund the project (Clauses 3.3 and 1.2). Payments were to be released through an ESCROW account in eight stages, later revised to eighteen stages in April 2021. However, JDA failed to maintain sufficient funds in the ESCROW account, which impeded progress.

2.5. The applicant repeatedly communicated concerns about the shortage of funds, delays in approvals for external development works such as water supply and electrification, and the need for a tripartite pari-passu mortgage agreement to secure financing. Despite multiple requests, JDA did not respond.



2.6. From 22.07.2022 onwards, the applicant sought formation of a Dispute Review Expert/Board (DRE/DRB) as required by Appendix-B of the contract, but JDA failed to constitute it. Meanwhile, JDA issued show-cause notice 22.11.2023, alleging project delays and threatening contract termination, ignoring their own contractual lapses.

2.7. The applicant responded by highlighting the minimal funds received in the ESCROW account, which was sufficient for only about two days of work, and the absence of necessary approvals.

2.8. On 10.01.2025, JDA terminated the contract, debarred the applicant, and forfeited the performance security, citing insufficient progress. The applicant challenged these actions, attributing delays to JDA's failures. Despite assurances during a meeting on 26th December 2022, no DRE/DRB was formed.

2.9. Consequently, the applicant invoked arbitration as per Appendix-B and Section 21 of the Arbitration and Conciliation Act, 1996, however, JDA refused arbitration citing a pending Section 9 application in Commercial Court No.1, Jodhpur, which the applicant clarified was solely for interim relief.

2.10. Resultantly, the applicant now seeks the court's intervention under Section 11 of the Arbitration and Conciliation Act, 1996, requesting appointment of a sole arbitrator since JDA failed to form the DRE/DRB and refused to nominate an arbitrator, thereby violating the contract's dispute resolution mechanism.

3. Per contra, learned counsel for the respondent-non-applicant contends that the applicant's application under Section 11(6) of the Arbitration Act, 1996, is wholly misconceived and without merit, as the applicant has not demonstrated the existence of any



arbitral dispute justifying the appointment of an arbitrator. The reliance on Clauses 2.0 and 3.0 of Appendix-B is unfounded because Clause 2.0(d) allows for the formation of a Dispute Resolution Board (DRB/DRE) only during the execution of work which was discontinued in December, 2021. Furthermore, prior to seeking arbitration proceedings, the applicant failed to first approach the Dispute Review Board. Therefore, the dispute cannot be referred to arbitration under Clause 3.0. Accordingly, the application deserves to be dismissed, he urges.

4. I have gone through the record and heard the learned counsel for the parties.

5. I am unable to persuade myself with the objection taken by learned counsel for the non-applicant/ respondent that prior to seeking arbitration proceedings, the applicant failed to first approach the Dispute Review Board as per Clause (2) of the contract signed between the parties. However, it seems that the shoe is on the other foot. The applicant has been throughout pursuing the respondents to seek resolution by regular correspondence / communications and yet the respondents turned deaf ears to the same without taking any steps.

6. It has been specifically pleaded so even in the application that the applicant requested the respondents to form DRE/DRB to facilitate the ironing out the differences between the parties vide communication dated 22.07.2022, but to no avail.

7. The Clause-3 as contained in Appendix-B pertaining to arbitration is reproduced herein-below :-

“3.0 Arbitration :



(a) Any dispute in respect of which the recommendations (if any) of DRE/DRB has not become final and binding, shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996, or any statutory amendment thereof.

(b) The arbitral tribunal will comprise three members, one each to be appointed by the Procuring Entity and the Contractor. The third Member, who will also act as the presiding member, will be appointed by mutual consent of the first two members. If these two Members fail to reach an agreement on the third members then, on request by either or both parties, appointment will be made by the ACS, UDH, Jaipur."

8. The aforesaid arbitration clause is not disputed. Moreover, there is no quibble about the fact that there is an existing dispute between the parties, but there is a dispute as to which forum should adjudicate the same. However, on a court query qua the pre arbitration proceedings as per Clause-3 *ibid*, it transpires that nothing worthwhile has come forth after issuance of legal notice. The dispute can, therefore, only be resolved by way of arbitration as mutually agreed by executing the contract to the effect. Parties are bound by the covenant already executed by them on mutually agreeable terms.

9. It is not clear from the petition as to what is the total outstanding amount against the work carried out by the applicant, which he claims is unpaid as on today. Though in the legal notice dated 07.10.2024 para 34 thereof, it is stated that as per the show cause notice issued by the respondent, the applicant had accomplished work only of Rs.14,09,58924/- against work order of Rs.19,71,90,000/-. However, the same is disputed by the respondent and subject matter of adjudication through arbitration proceedings. It is not for this Court to make any observation qua the same. The applicant is at liberty to raise its outstanding



money claim before the learned arbitrator at the time of entering into the reference by filing the claim petition in accordance with law.

10. Be that as it may, in view of the undisputed arbitration clause, the instant application deserves to be allowed.

11. Accordingly, Hon'ble Mr. Justice **Mr. Vineet Kothari** (Retd.), Mobile No.9480822552, R/o- 947, 11th 'D' Road, Sardarpura, B.M. Kothari Marg, Jodhpur, Rajasthan, is appointed as the sole Arbitrator to adjudicate the dispute between the parties.

12. The intimation of aforesaid be given by the learned counsel for the parties as well as by the Registry to Hon'ble Arbitrator. The above appointment is subject to necessary disclosure being made under Section 12 of the Act of 1996.

13. The parties are at liberty to participate in the arbitration proceedings through video conferencing subject to the approval and convenience of the learned Arbitrator.

14. All the disputes as well as defence raised before this Court is left open to be adjudicated by the learned Arbitrator.

15. Application stands disposed of.

(MUKESH RAJPUROHIT),J