

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

S.B. Arbitration Application No. 41/2023

Union Of India, Through Garrison Engineer Banar, Po Banar,
Jodhpur 342027.

-----Petitioner

Versus

M/s Meccon Infrastructure, C/o Gena Ram Dogiyal, Oppo. Prem
Krishi Udyog, Ram Nagar, Sindhari Road, Barmer (Raj.).

-----Respondent

For Petitioner(s)	:	Ms. Nidhi Singhvi for Mr. Deelip Kawadia
For Respondent(s)	:	None Present

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

13/04/2026

1. The present application has been filed by the Union of India under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act of 1996") seeking appointment of a sole arbitrator for adjudication of disputes arising out of the contract awarded in favour of the respondent-firm M/s Meccon Infrastructures for carrying out periodical services to buildings inside Depot at Banar.
2. Heard learned counsel for the applicant.
3. Learned counsel for the applicant submits that vide Office Acceptance Letter dated 07.10.2017, the contract for carrying out periodical services to buildings inside Depot at Banar was awarded by Garrison Engineer, Banar in favour of the respondent-firm. It is submitted that as per the terms of

the contract, the stipulated date of completion of the work was 11.10.2018.

4. It is further submitted that despite repeated notices and opportunities granted by the department, the respondent-firm failed to complete the work within the stipulated period. Consequently, the contract was cancelled with effect from 16.08.2020 in terms of the conditions of the contract.
5. Learned counsel further submits that thereafter the balance work was got completed by the department at the risk and cost of the respondent-firm in terms of Condition No.54 of IAFW-2249 (General Conditions of Contract). Upon completion of the balance work through fresh tender process, notice dated 13.07.2021 was issued to the respondent-firm calling upon it to deposit an amount of Rs.7,59,147.05/- towards the extra expenditure incurred by the department. It is submitted that the said notice further stipulated that in the event of default, arbitration proceedings under Condition No.70 of IAFW-2249 would be invoked.
6. It is further submitted that since the respondent-firm neither deposited the aforesaid amount nor responded to the communication, hence, in the terms of clause 7(b) of the Tender Document, the applicant invoked Condition No.70 of IAFW-2249 vide notice dated 12.10.2021 for appointment of an arbitrator.
7. Learned counsel for the applicant submits that thereafter, a copy of the mutual agreement in terms of the provisions contemplated under the Act of 1996 was forwarded to the

respondent on 02.12.2021 for signature and return, however, no response was received from the respondent.

8. It is further submitted that subsequently, pursuant to an amendment approved by the competent authority regarding constitution of panel of serving officers for appointment of arbitrators in respect of contracts concluded under CE Southern Command, a fresh mutual agreement along with requisite documents was again forwarded to the respondent vide communication dated 15.06.2023. A reminder dated 03.08.2023 was also issued requesting the respondent to return the duly signed mutual agreement, however, no response has been received till date.
9. Learned counsel submits that despite repeated communications and invocation of the arbitration clause, the respondent has failed to cooperate in constitution of the arbitral tribunal and therefore, the agreed procedure for appointment of arbitrator has failed. He, therefore, prays for appointment of an independent sole arbitrator by this Court.
10. No reply to the application has been filed on behalf of the respondents despite several opportunities granted for the same.
11. I have considered the submissions advanced by learned counsel for the applicant and perused the material available on record.
12. In the case in hand, the clause 7(b) of the Tender Document states that all disputes shall be referred for sole arbitration and the arbitration clause contained in Condition No.70 of IAFW-2249 provides that all disputes arising between the

parties to the contract shall be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

For ready reference, clause 7(b) of the Tender Document and condition 70 of IAFW-2249 are reproduced below:

- Clause 7(b):

“b) To execute all works referred to in the said documents upon the terms and conditions contained or referred to therein at the item rates contained in the aforesaid Schedule 'A' or to such other rates as may be fixed under the provisions of condition 62 and to carry out such deviation may be orders vide condition 7 up to a maximum of 10% (Ten PERCENT) and further agree to refer all disputes, as required by Condition 70 to sole arbitration of an Serving Officer having Degree in Engineering or equivalent or having passed Final./ Direct Final Examination of Sub-Division - II of Institution of Surveyor (India) recognized by the Govt. of India to be appointed by the Chief Engineer Jodhpur Zone, Jodhpur or in his absence the Officer officiating as Chief Engineer if specifically delegated in writing by Chief Engineer Jodhpur Zone, Jodhpur whose decision shall be final conclusive and binding.”

- Condition 70:

“70. Arbitration-All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of a [Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division li of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative

arrangements have been finalised by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the Contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, *exparte*, if either party, in spite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual, item of dispute. 2 [The arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims].

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the Contract.”

13. The material available on record reflects that disputes have arisen between the parties in relation to recovery of additional expenditure incurred by the department after cancellation of the contract and completion of the balance work at the risk and cost of the respondent-firm.
14. In the present case, since the parties have failed to arrive at a consensus regarding appointment of sole arbitrator and the agreed procedure for appointment has failed, this Court

considers it appropriate to appoint an independent arbitrator.

15. Upon considering the submissions advanced and documents on record, this Court is of the opinion that the present application deserves to be allowed.
16. Accordingly, **Shri Rajendra Mehta**, Retd. S.E., PHED, R/o 9A, Section-7 Extension, New Power House Road, Jodhpur (Mobile No. 9828123426), is hereby appointed as the sole arbitrator to adjudicate the disputes arisen between the parties pursuant to notice dated 12.10.2021.
17. The appointment of the sole arbitrator shall remain subject to the requisite disclosure being made under Section 12 of the Act of 1996.
18. The fee of the learned arbitrator shall be governed by the Fourth Schedule of the Act of 1996.
19. The intimation of the aforesaid appointment shall be communicated by the Registry as well as learned counsel for the applicant to Shri Rajendra Mehta, Retd. S.E., PHED.
20. The present arbitration application stands allowed in the aforesaid terms.
21. All pending application(s), if any, also stand disposed of.

(MUKESH RAJPUROHIT),J