



Reserved on 9.4.2026
Delivered on 23.4.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 8 of 2022

Sunil Hitech Engineers Limited

.....Applicant(s)

Versus

Bharat Heavy Electricals Limited

.....Opposite Party(s)

Counsel for Applicant(s)	:	Aishwarya Pratap Singh
Counsel for Opposite Party(s)	:	Apurva Hajela

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Aishwarya Pratap Singh, learned counsel for the applicant and Mr. Apurva Hajela, learned counsel for respondent.

2. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of sole Arbitrator.

3. Learned counsel for the applicant submits that the respondent/opposite party had floated Tender No. 425 & 525 for execution of structural steel works and further erection, testing and commission thereof respectively, which were awarded to the applicant and same contain arbitration clause. However, some dispute arose between the parties, therefore,

the applicant had invoked the arbitration clause. He further submits that both the projects in question are interlinked in nature and the parties involved therein are the same, thus, the applicant invoked the arbitration clause in a single composite proceeding. He further submits that despite invocation of arbitration clause, the opposite party failed to appoint a consented arbitrator. Hence, the present application.

4. *Per contra*, learned counsel for the opposite party submits that the dispute sought to be referred by the applicant is in fact distinct and independent in nature and same is arising out of different cause of action. He further submits that such separate and unrelated dispute cannot be clubbed together in a single arbitration proceeding, therefore, initiation of a composite proceeding seeking reference of multiple dispute, is stated to be illegal and not sustainable in the eyes of law.

5. However, the existence of dispute has not been denied by the counsel for the opposite party and he also consented for resolving the dispute between the parties by the Arbitrator appointed by this Court.

6. Rebutting the said submission, learned counsel for the applicant submits that the contention of the opposite party that the dispute has been arisen from different matters and, therefore, the same cannot be referred in a single arbitration proceeding, is misconceived. It is submitted that the dispute between the parties is arising out of contractual dealings between the same parties and relates to settlement of contractual dues as well as allied issues under the contracts/agreements. It is further submitted that, in any case, such objections pertain to the merits and scope of the claims,

which are to be considered by the arbitral tribunal and not at the stage of appointment of sole Arbitration under Section 11(6) of the Act. However, the applicant agrees that the appointed sole arbitrator shall adjudicate both issues regarding Tender No. 425 and 525, separately and shall be paid accordingly with separate fee and costs.

7. To the last submission, learned counsel for the opposite party has no objection.

8. After hearing learned counsel for the parties, the Court has perused the record.

9. The record shows that a contract was awarded by the opposite party to the applicant pursuant to a tender for structural steel works at Harduaganj Thermal Power Station and an agreement was executed between the parties, which contains an arbitration clause. It further transpires that the dispute arose between the parties with regard to execution of contract as well as payment of dues, therefore, the applicant invoked the arbitration clause and sent notice to the opposite party but the opposite party failed to act in accordance with the agreed procedure of the agreement for appointment of an arbitrator. However, the applicant consented to the appointed sole arbitrator adjudicating different tenders independently for which separate fee and cost shall be paid to which the opposite party has no objection.

10. Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corporation* 2019 SCC OnLine SC 358 has held that that issues relating to arbitrability and merits are to be left to the arbitral tribunal except in cases where the Court finds that no valid arbitration agreement exists.

11. Similarly, in *Mayavati Trading Pvt. Ltd. v. Pradyuat Deb Burman*, (2019) 8 SCC 714, Supreme Court held as under:

"This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) -- see paras 48 & 59."

12. While laying down that law, the Supreme Court had itself referred to paragraph nos. 48 & 59 of its earlier decision in the case of *Duro Felguera, S.A. Vs. Gangavaram Port Ltd.*, (2017) 9 SCC 729.

13. That position in law has been reiterated in a recent decision of the Supreme Court in *GOQII Technologies Pvt. Ltd. Vs. Sokrati Technologies Pvt. Ltd.*, (2025) 2 SCC 192.

14. In view of the law laid down by Hon'ble the Apex Court, this Court finds that an arbitration agreement exists between the parties and admittedly, the dispute has been arisen. The opposite party has failed to appoint a consented arbitrator as per the agreed procedure of the agreement. The objections raised by the opposite party relate to the merits of the dispute, which cannot be adjudicated at this stage in exercise of jurisdiction under Section 11 (6) of the Act. Thus, this Court is satisfied that the conditions for exercise of power under Section 11(6) of the Act, are fulfilled.

15. Accordingly, Mr. Justice O.P. Garg (Former Judge of High Court, Allahabad), residence of E-48, Sector no. 39,

NOIDA, UP, Mobile No. 9818274126, be appointed the sole arbitrator, subject to his consent, for resolution of the different issues concerning different tender nos. 425 & 525, independently, for which separate fee and cost, shall be borne by the parties.

16. The Registry is directed to obtain consent of the proposed learned arbitrator, in terms of Section 11(8) of the Act, within three weeks.

17. List again on 18.5.2026 for further order.

(Piyush Agrawal,J.)

April 23, 2026

Rahul Dwivedi/-