



HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 122 of 2024

M/S Dpc - Mbpl (Jv)

.....Applicant(s)

Versus

Union Of India Through General Manager, North
Central Railway And 4 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Some Narayan Mishra, Taufir-Ul-Islam
Counsel for Opposite Party(s) : A.S.G.I., Vivek Kumar Singh

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Counter affidavit filed today is taken on record. Learned counsel for the applicant does not propose to file any rejoinder affidavit to the same.
2. Heard the learned counsel for the parties.
3. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator.
4. Learned counsel for the applicant submits that the applicant was awarded a contract for construction of road under bridge and letter of acceptance was issued on 26.07.2016. Thereafter, on 19.04.2017, an agreement was executed between the parties. The final completion certificate was issued on 04.05.2022. Thereafter, a dispute arose between the parties and ultimately, on 30.05.2022, a notice/letter was issued to the respondent invoking the arbitration clause; however, the respondent failed to respond to the same. Hence, this application.
5. Learned counsel for the opposite party does not dispute the fact about the existence of dispute between the parties.
6. Having heard learned counsel for the parties, the scope of the present proceedings under Section 11 of the Act does not require any elaboration in view of that position in law having been made crystal clear by a recent three judge decision of the Supreme Court in the case of *M/S Mayavati Trading Pvt. Ltd. Vs. Pradyut Deb Burman*, Civil Appeal No. 7023 of

2019, decided on 05.09.2019 in which it has been held as below:

"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."

7. 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.

8. 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.

9. In the facts of the present case, on prima facie basis, it has to be accepted that there exists an arbitration clause, between the parties. Also, it is clear that the parties have not been able to appoint consented arbitrator and therefore, the appointing authority has to be assumed by this Court upon the present application.

10. At the same time, no final conclusion is being drawn as may affect the merits of the claim. That matter would remain to be considered by the appropriate forum at the appropriate stage, upon claim, objection, challenge or appeal being filed. Thus, amongst others it would remain open to the opposite party to raise all objections as the Act permits.

11. Leaving that course completely open to the respective parties, at present, only a forum is being provided for adjudication of a claim proposed to be raised and resisted, in accordance with the law.

12. With the consent of the parties, this Court proposes the name of Hon'ble Mr. Justice Govind Mathur, (a Former Chief Justice of this Court), resident of 43, Central School Scheme, Air Force Area, Jodhpur

(Rajasthan) 342 011 (email ID: govindmathur@gmail.com), Mobile No. 6391006169, to act as an Arbitrator for resolving the disputes between the parties.

13. The Registry is directed to obtain the consent of the proposed Arbitrator in terms of Section 11(8) of the Arbitration & Conciliation Act, 1996.

14. List on 17.03.2026 for further orders.

(Piyush Agrawal,J.)

February 16, 2026

Amit Mishra