



HIGH COURT OF JUDICATURE AT ALLAHABAD
ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 116 of 2025

M/S Friends Earth Movers

.....Applicant(s)

Versus

Indian Oil Corporation Limited

.....Opposite
Party(s)

Counsel for Applicant(s) : Ashish Pandey, Santosh Kumar Mishra
Counsel for Opposite Party(s) : Ankush Tandon, Anand Tiwari

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the parties.
2. Learned counsel for the applicant submits that a tender for the construction of balance civil work for 220 KV BGPIP at Mathura Refinery and letter of acceptance was issued by the respondent on 8.6.2022. He submits that agreement contains arbitration clause, however, some dispute arose between the parties, therefore, the applicant had invoked the arbitration clause by sending notice to the opposite party but no consented arbitrator could be appointed. Hence the present application has been filed for appointment of Arbitrator in exercise of powers under Section 11 (6) of the Arbitration and Conciliation Act,1996.
3. The submissions of the counsel for the applicant was vehemently opposed by the learned counsel for the opposite parties but the existence of dispute has not been denied by the counsel for the opposite party therefore, he also consented for resolving the dispute between the parties by the Arbitrator appointed by this Court.
4. 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."

5. 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.**

6. 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.**

7. 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 brought before it, within limitation.

8. 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.

9. 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.

10. Accordingly, with the consent of learned counsel for the parties, **Mr. Justice S.R. Singh, Former Judge of High Court Allahabad, residence of D-4, Sector 122, NOIDA, Gautam Buddha Nagar (Mobile 9910055665)** be appointed the sole arbitrator for resolution of

the disputes between the parties.

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

12. List again on 11.5.2026.

(Piyush Agrawal,J.)

April 9, 2026

Rahul Dwivedi/-