



HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 243 of 2025

The Krishna Construction Company Through Its
Authorized Representative Mr. Amit Kumar

.....Applicant(s)

Versus

Union Of India, Through The Executive Engineer &
Sm

.....Opposite
Party(s)

Counsel for Applicant(s) : Vinayak Mithal

Counsel for Opposite Party(s) : Abrar Ahmad, A.S.G.I., Manoj Kumar
Singh

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Anurag Khanna, learned Senior Counsel assisted by Shri Neelesh Romchandani and Shri Rishabh Agrawal, Advocate holding brief of Sri Vinayak Mithal, learned counsel for the applicant and Shri Abhuyuday Pratap Singh, Advocate holding brief of Shri Manoj Kumar Singh, learned counsel for opposite party No.1.
2. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking the appointment of a sole independent arbitrator to adjudicate the disputes arising between the parties in relation to the e-Tender.
3. Learned Senior Counsel for the applicant submits that the applicant was awarded the contract for renovation work at Sir Sunder Lal Hospital, BHU, Varanasi with an estimated cost of approximately Rs. 36.53 Crores. The work was to be governed by the General Conditions of Contract (GCC) 2020, which contains an arbitration clause under Clause 25. The applicant alleges that the project suffered significant delays due to the respondent's failure to hand over the site timely and the respondent-department for such delay, issued several show cause notices. However, the work got duly completed in the month of December, 2023/ January, 2024. He further submits that despite completion of the work available to them, the respondent-department proceeded to issue a fresh Notice Inviting Tender (NIT) for execution of the alleged balance work at a much higher cost,

without finalising or closing the existing agreement of the applicant and thus, the agreement between the parties continues to subsist and remains binding even after issuance of the said NIT.

4. Learned Senior Counsel for the applicant further submits that it is a settled principle of law that the respondent-department could not have issued a fresh NIT for the same work without first duly terminating or closing the contract of the applicant in accordance with law. He further submits that no final measurement of the work executed by the applicant has been carried out, nor has any final bill been prepared or settled, thus, in absence thereof, the action of the respondent in issuing a fresh NIT is arbitrary and contrary to the conditions of Contract. He further submits that while they executed work valued at over Rs. 20 Cr on a restricted site, the respondent failed to process the Extension of Time (EOT) applications and instead levied a penalty of Rs. 2,23,54,929/- under Clause 2 of the GCC.

5. He further submits that although a three-member tribunal was initially constituted and an interim stay was granted on 05.05.2025, the respondent unilaterally attempted to terminate the mandate of that tribunal. Thereafter, it was suggested between the parties that instead of continuing with three member tribunal, the dispute may be referred to a sole arbitrator, in pursuance of which respondent nominated and unilaterally appointed Mr. Anand Prakash as a sole arbitrator without obtaining the requisite waiver from the applicant mandated under Section 12(5) of the Act. The applicant objected the said appointment by expressly conveying the apprehension of impartiality by the said appointment. However, despite passing of an interim order by the court, the sole arbitrator continued ex-parte with the arbitral proceeding in disregard to the said order. He further submits that the subsequent unilateral appointment of a sole arbitrator, Shri Anand Prakash, by the respondent on 29.10.2025 is illegal and in direct violation of the guidelines regarding the neutrality of arbitrators. Hence, this present application.

6. The submission of the counsel of applicant was vehemently opposed by the learned counsel for the opposite party submitting that the applicant failed to complete the work within the stipulated time, necessitating the levy of compensation. He further submits that the respondent has already acted in accordance with the agreement by referring matters to the arbitrator appointed for the purpose. 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.

7. Having heard learned counsel for the parties.

8. It is not in dispute that the respondent unilaterally appointed Mr. Anand Prakash to which the appellants has neither given any waiver as contemplated under Section 12(5) of the Act nor expressed its consent that the appointed arbitrator i.e. Mr. Anand Prakash will be impartial. In such a situation, a unilateral appointment, made by the interested party in absence of any waiver by the opposite party, is void ab initio.

9. The Delhi High Court in **Kalpataru Projects International Ltd. v. Northern Railway; 2026 SCC OnLine Del 110** held that unilateral appointment of arbitrators by one party, particularly where the other party has not waived the applicability of Section 12(5) of the Act, is impermissible. Similarly the Delhi High Court in **Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi; 2025 SCC OnLine Del 4241** held that the procedure of appointment of arbitrator as envisaged in the contract cannot override the statutory mandate contained in Section 12(5) read with the Seventh Schedule of the Act It was further held that any appointment made in contravention thereof is liable to be set aside. Further, in **Subham Garg and others v. Ajay Kumar Maheshwari (Civil Misc. Arbitration Application No. 91 of 2018, decided on 26.4.2019)**, this Court has expressed the similar view.

10. In view of the above noted case laws, this Court is of the considered opinion that unilateral appointment of an arbitrator by the respondent cannot sustain and thus the dispute between the parties can be resolved through a freshly appointed sole arbitrator.

11. 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. Pradyuat 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."

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 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.

15. 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.

16. 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.

17. In view of the forgoing discussion and in the light of Section 12(5) of the Act, 1996, this Court is of the considered view that the unilateral appointment of Mr. Anand Prakash is legally unsustainable. Consequently, the mandate of the said arbitrator stands terminated.

18. Accordingly, with the consent of learned counsel for the parties, **Mr. Justice Rajesh Bindal, Former Judge, Supreme Court of India, R/o 2, Akbar Road, New Delhi, Mob. 7347025001, Email:- Rajesh bindal@yahoo.com** be appointed the sole arbitrator for resolution of the

disputes between the parties.

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

20. List again on 12.5.2026.

April 20, 2026
Vandana

(Piyush Agrawal,J.)