

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/621/2026
M/S DKS RCC JV
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 9th September, 2026.

Appearance:-
Mr. Bhaskar Roy, Adv.
Ms. Debangana Dey, Adv.
...for petitioner.

Mr. Dhruv Surana, Adv.
Ms. Sumita Sarkar, Adv.
...for respondents.

The Court: - The petitioner DKS-RCC JV has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitral tribunal to adjudicate the disputes and differences that have arisen between the parties out of Letter of Acceptance bearing No. ALIPURDUAR DIVISION – ENGINEERING/07-AP-III-2023/00962990088352, issued on 05.10.2023 and the Contract No. NFR/APDJ/Civil/2023/0055 dated 09.02.2024.

The case of the petitioner is that it was awarded the contract pursuant to a tender floated by the North East Frontier Railways. The total value of the work was Rs.22,88,76,284.97/- with the stipulated period of completion being twelve months. The contract value was subsequently enhanced to Rs.24,43,35,470.68/-.

The petitioner alleges that the execution of the work was substantially impeded on account of various defaults attributable to the railways, including delay in supply of drawings, obstruction caused by existing R.E/T.R.D. posts, non completion of work by other agencies and failure to take decision in respect of plumbing and sanitary wares. It is further alleged that the petitioner's running bill of Rs.1,31,44,515.71/-, despite having been approved and vetted, remained unpaid. It is further alleged that even after the termination of the contract on 16.10.2025, the petitioner had carried out further work. Accordingly, the petitioner states that the bills raised by him remained unpaid, leading to the dispute.

The petitioner has raised a claim of Rs. 9,51,34,051.99/- including claims towards earnest money, performance guarantee, security money, unpaid bills, unrecorded work, alleged deficits in materials. It is the case of the petitioner that despite several communications, the respondent did not carry out the joint measurement thus leading to the unpaid bills of the petitioner.

The petitioner thereafter formally issued notice dated 24th March, 2026 calling upon the respondent to constitute the arbitral tribunal. The said letter was replied to by the respondent on 17th April, 2026, whereby, the respondent called upon the petitioner to furnish a waiver under Section 12(5) of the Act. The petitioner declined to furnish such waiver by its letter dated 5th May, 2026 and 11th May, 2026. The petitioner had specifically relied upon the earlier communication dated 25th April, 2025 recording that no waiver could be given under Section 12(5) of the Act.

The petitioner further contends that Clause 63.1 read with 64.1 of the General Conditions of Contract contains the arbitration agreement between the parties. Under the contractual mechanism, disputes are initially required to be placed before the General Manager and upon failure to resolve the disputes within the stipulated period the contractor is entitled to invoke the arbitration clause.

The existence of the arbitration agreement is not in dispute. The disputes arising out of the contract and save and except matters specifically excluded under the GCC are amenable to arbitration. The question as to whether any particular claim constitutes an “accepted matter” is for the arbitral tribunal to adjudicate in accordance with the contract and the applicable laws.

Learned counsel for the respondent does not dispute the existence of the agreement between the parties as well as the arbitration clause has contained in the GCC.

With the consent of the parties, the matter is referred to arbitration.

Accordingly, this Court appoints Justice Samapti Chatterjee (Retired) as the Presiding Arbitrator, and Mr. Jishnu Chowdhury, Sr. Advocate (Mob. No. 9830015791), and Mr. Sariful Haque, Advocate (Mob. No. 9674472239) as Arbitrators, to constitute the Arbitral Tribunal for adjudicating the disputes and differences that have arisen between the parties.

The learned Arbitrators shall enter upon the reference after making the disclosure in terms of Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.

The learned Arbitrators shall fix their remunerations in terms of the Fourth Schedule of the Act or as may be agreed between the parties.

A copy of this order shall be communicated to the learned nominee Arbitrators, to enable them to take necessary steps for constitution of the Arbitral Tribunal.

It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned Arbitral Tribunal, which shall decide the same in accordance with law.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

R. D. Barua