IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 16 of 2026

TAHAL CONSULTING ENGINEERS INDIA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Plot No. 34, Phase 2, 2nd Floor, Sector-44, Institutional Area, Gurgaon - 122 003, Haryana Through Arun kumar, Aged about 41 years, Son of Ram Partap Sharma, Resident of village - Garari, P.O & P.S -Bal Bihal, District - Hamirpur, Himanchal Pradesh - 176040. ... ... Petitioner

Versus

1. The State of Jharkhand through its Secretary, Drinking Water & Sanitation Department, Ranchi, Jharkhand, Govt. of Jharkhand having its office at P.O.P.S. Dhurwa Dist Ranchi
2. Engineer-in-Chief Drinking Water & Sanitation Department, Govt. of Jharkhand having its office at house number :1, 6, Doranda Bazar, Resaldar Nagar, P.O.P.S. Doranda, Dist Ranchi, Jharkhand 834002
3. Superintending Engineer Drinking Water & Sanitation Department Dhanbad Division having its office at P.O.P.S. & Dist Dhanbad
4. Executive Engineer, Drinking Water & Sanitation Department Dhanbad Division having its office at P.O.P.S. & Dist Pakur.

… ... Respondents

With

Arbitration Application No. 6 of 2026

TAHAL CONSULTING ENGINEERS INDIA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Plot No. 34, Phase 2, 2nd Floor, Sector-44, Institutional Area, Gurgaon - 122 003, Haryana Through Arun kumar, Aged about 41 years, Son of Ram Partap Sharma, Resident of village - Garari, P.O & P.S -Bal Bihal, District - Hamirpur, Himanchal Pradesh - 176040. ... ... Petitioner

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4. Executive Engineer, Drinking Water & Sanitation Department Dhanbad Division having its office at P.O. & P.S. & Dist Pakur.

... ... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Petitioner: Mr. Shresth Gautam, Advocate
Mr. Himanshu Harsh, Advocate
Mr. Padmanav Sahdeo, Advocate

For the Respondents: Mr. Sonal Tiwari, A.C. to A.G.

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02 /Dated: 10.04.2026

1. Heard learned counsel for the parties.

2. Learned counsel for the parties agree that both these applications can be disposed of by a common order since they concern the same parties and raise common issues relating to the appointment of an Arbitrator by exercising powers under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (the said Act).

3. From the record, there can be no two opinions on the issue that disputes have arisen between the parties. However, a serious dispute was raised by Mr Sonal Tiwari, learned A.C. to A.G., appearing for the respondents-State, on the existence of any arbitration agreement as contemplated by Section 7 of the said Act.

4. Mr Tiwari submitted that even going by the limited scope of the proceedings under Section 11 (6) of the said Act, still, if, upon examination, it is found that there is no arbitration agreement between the parties, then applications under Section 11 (6) of the said Act ought to be dismissed. He submitted that these are matters in which the arbitration clause was deliberately deleted from the conditions of the contract entered into by the parties. Therefore, he submitted that relying upon only the definition clause or some clarifications in the pre-bid meeting, neither could the existence of an arbitration clause be inferred nor could any intention be imputed to the parties to refer their disputes to arbitration.

5. Mr Shresth Gautam, learned counsel for the applicants firstly referred to **Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In RE, (2024) 6 SCC 1**, to submit that the scope of the proceedings under Section 11 (6) of the said Act is extremely limited and confined only to the examination of the existence of an arbitration agreement. He submitted

that, apart from the definition clause in the conditions of contract, the respondents had clarified all the legal provisions for conciliation and that arbitration can be exercised by the agency. Further, he referred to the acceptance letter dated 14.09.2017, which, in clause 14, provides that the NIT, bid document, proceedings of pre-bid meetings, and all other related tender documents shall be part of the agreement. He therefore submitted that this was a case where, at least *prima facie,* the existence of an arbitration agreement could not be seriously disputed.

6. Mr Shresth Gautam also relied on **Glencore International AG vs Shree Ganesh Metals and Another, (2025) SCC Online SC 1815** and **Mahanagar Telephone Nigam Limited Vs. Canara Bank and Others, (2020) 12 SCC 767** to submit that there was no form provided for an arbitration agreement and even mere non-signing would not invalidate an arbitration agreement, if the parties otherwise consented to arbitration. He submitted that the existence of an arbitration agreement can be inferred, *inter alia,* from correspondence, telegrams, and other documents. He submitted that at this stage, the applicants only had to make out a *prima facie* case about the existence of an arbitration agreement and the contentious issues now raised on behalf of the respondents could very well be decided by the Arbitral Tribunal, once the same is constituted and the parties are referred to arbitration.

7. The rival contentions now fall for my determination.

8. In both these matters, this Court is concerned with the same conditions of contract as set out in the invitation to bid (NIT).

9. Clause 1.1 of the Conditions of Contract, which is in the chapter dealing *inter alia* with *"*definitions" which reads as follows:-

> "1.1 Terms which are defined in the Contract data are not also defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.
>
> The Adjudicator/ Arbitrator synonymous with (Dispute Review Expert) is the person appointed jointly by the employer and the contractor to resolve disputes in the first instance, as provided for in clause 24 and 25. It is to be conducted under the rules of Indian Arbitration and Conciliation Act, 1996 (26 of 1996) any statutory modifications or re-enactment thereof."

10. The definition clause specifically refers to clauses 24 and 25. However, these clauses have been "deleted". Clauses 1.1 and the reference to deleted clauses 24 and 25 are found at pages 65 and 71 of the paper book in Arbitration Application No. 6 of 2026.

11. Based upon the above position, even after being conscious of the limited scope of examination as to the existence of an arbitration clause in a proceeding under Section 11 (6) of the said Act, I must confess that I would have been reluctant to infer the existence of an arbitration clause and refer the parties to resort their disputes to arbitration.

12. However, Mr Shresth Gautam, the learned counsel for the applicants, referred to the minutes of the pre-bid meeting held on 18.01.2017 under the Chairpersonship of the Engineer-in-Chief, Drinking Water and Sanitation Department, Jharkhand. The minutes, which are at Annexure-2 (pages 200 to 215 of Arbitration Application No. 6 of 2026), record, *inter alia,* the presence of the Engineer-in-Chief, the Superintending Engineer (Planning), and the representatives of the prospective bidders. Mr Sonal Tiwari pointed out that no representative of the applicants was present at this meeting.

13. Nevertheless, at least *prima facie,* the clarifications issued by and on behalf of the respondents would apply to the applicants herein, even though their representative may not have remained present at the pre-bid

meeting. The clarifications were for the benefit of all prospective bidders, not just those who, through their representatives, attended the pre-bid meeting held on 18.01.2017.

14. The clarification, upon which Mr Shresth Gautam relied, is at serial No. 59 of the Minutes (at page 215 of the paper book). The same is transcribed below for the convenience of reference.

Sr No.	Reference	Particulars	Query	Clarification
59.	Section-3 Conditions of Contract Cl. 1.1 Page no 39	The Adjudicator/ Arbitrator synonymous with (Dispute Review Expert) is the person appointed jointly by the employer and the contractor to resolve disputes in the first instance, as provided for in clause 24 and 25. It is to be conducted under the rules of Indian Arbitration and Conciliation Act, 1996 (26 of 1996) any statutory modifications or re-enactment thereof	The Clauses 24 or 25 are not present in the Condition of Contract, hence the contract is silent about the methodology of Arbitration. We would request client to provide the same.	All the legal provision for conciliation, arbitration can be exercised by the agency.

15. The above-referred clarification was in response to the prospective bidders' query regarding the absence of clauses 24 and 25 in the conditions of contract, even though such clauses are referred to in clause 1.1 of the conditions of contract.

16. The response on behalf of the respondents was that "*all the legal provisions for conciliation, arbitration can be exercised by the agency".*

17. Further, clause 14 of the letter of acceptance dated 14.09.2017 from the Engineer-in-Chief to the applicants herein (Annexure-3 at pages 216 to 219 of the paper book), provides as follows:-

> *"14. The NIT, Bid Document, Proceeding of pre-bid meetings and all other related tender documents shall be the part of the agreement."*

18. Thus, again, *prima facie,* Clause 14 suggests that even the proceedings of the pre-bid meetings shall form part of the agreement. A conjoint reading of the minutes of the pre-bid meetings and Clause 14 of the letter of acceptance dated 14.09.2017 raises an arguable case as to the existence of an arbitration agreement. At least *prima facie,* therefore, given the limited scope of examination in proceedings under Section 11(6) of the said Act, it could be held at this stage that there does exist an arbitration agreement between the parties, sufficient to refer them to an Arbitral Tribunal, so that the Arbitral Tribunal can, in detail, appreciate the rival contentions regarding the existence of an arbitration agreement.

19. Mr Sonal Tiwari did submit that the clarification in the pre-bid meeting refers to the exercise of conciliation and arbitration by "the agency". So, he submitted that this phrase is quite ambiguous.

20. In the context, at least *prima facie*, the phrase may not be as ambiguous as it was sought to be suggested. In any event, these are precisely the matters that could be determined in some detail by the Arbitral Tribunal once it is constituted and the parties are referred to it. Undertaking such an exercise in proceedings under Section 11(6) of the said Act may not be appropriate, given the law laid down by the Hon'ble Supreme Court in the case of **Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 (supra).**

21. In the above-referred decision, the Hon'ble Supreme Court has held as follows:-

> "163. We are of the opinion that the above premise of the Court in Vidya Drolia is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force, pending the notification of the Central Government, it is

incumbent upon this Court to give true effect to the legislative intent.

164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. **Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement.** Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. **The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination, Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act.** In Duro Felguera, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. **Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing.** This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under

Section 16. We accordingly clarify the position of law laid down in Vidya Drolia in the context of Section 8 and Section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. **The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.** This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. **Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.** A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.

168. In Shin-Etsu, this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45 of the Arbitration Act when the objection with regards to the arbitration agreement being "null and void, inoperative or incapable of being performed" is raised before a judicial authority. Writing for the majority, B.N. Srikrishna. J. held that Section 45 does not require the judicial authority to give a final determination. The Court observed that: (SCC p. 267, para 74)

> "74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act."
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> 169. **When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement."**

22. From the above, it is clear that Section 11(6-A) of the said Act continues to remain in force, and it is incumbent upon the Court to give true effect to the legislative intent. Section 11(6-A) inter alia provides that the High Court, while considering any application under Section 11(6),

shall, notwithstanding any judgment, decree or order of any Court, confine itself to the examination of the existence of an agreement.

23. Further, the Hon'ble Supreme Court has explained that the use of the term "examination" connotes that the scope of the power is limited to a *prima facie* determination. The Referral Courts need only consider one aspect to determine the existence of an arbitration agreement: whether the underlying contract contains an arbitration clause that provides for the arbitration of the disputes that have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, under Section 7, should be limited to the formal requirements, such as the requirement that the agreement be in writing. The court held that such an interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

24. The Hon'ble Supreme Court further held that though the burden of proving the existence of the arbitration agreement generally lies on the party seeking to rely on such agreement, in jurisdictions such as India, which accept the doctrine of competence-competence, only *prima facie* proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce evidence regarding the existence or validity of the arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

25. The Hon'ble Supreme Court pointed out that Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes the adjudication of disputes after the admission of evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of an arbitration agreement, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.

26. The Hon'ble Supreme Court further clarified that when the Referral Court renders a *prima facie* opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a *prima facie* view. If the Referral Court takes a *prima facie* view of the existence of an arbitration agreement, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out *prima facie* non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.

27. Mr Shresth Gautam also relied on **Glencore International AG (supra)** for principles relevant to determining the existence of an arbitration agreement. In this case, the Hon'ble Supreme Court has held that even non-signing of an agreement would not invalidate an arbitration agreement if the parties otherwise consented to arbitration through a

written document. The Hon'ble Supreme Court has held that there is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communications through electronic means, which provide a record of the agreement. The mere fact that the contract was not signed by the 1st respondent before the Hon'ble Supreme Court would not obviate from this principle that the conduct of the parties in furtherance of the said contract, clearly manifested acceptance of the terms and conditions contained therein, which would include the arbitration agreement in clause 32.2 thereof.

28. Thus, considering the limited scope of proceedings under Section 11(6) of the said Act, I am satisfied that this is a matter in which, at least *prima facie,* the existence of an arbitration agreement must be inferred between the parties, and that the parties must be referred to the Arbitral Tribunal, which can, no doubt, determine substantively all issues, including the issue of the existence of the arbitration agreement or its validity.

29. For all the above reasons, both these applications are liable to be allowed, and the parties referred to are to resolve their disputes through arbitration before the Arbitral Tribunal. Accordingly, Hon'ble Mr Justice Gautam Kumar Choudhary, Former Judge of this Court, is appointed as an Arbitrator in this matter.

30. However, it is clarified that the view regarding the existence of the arbitration agreement in this order is only a *prima facie* view and will not bind either the parties before the Court or the Arbitral Tribunal. Therefore, if the respondents herein raise an objection to the existence of an arbitration agreement, the same will have to be decided by the Arbitral Tribunal in accordance with law and on its own merits. Besides, all other objections that the respondents might have on this issue or otherwise are

left to the Arbitral Tribunal to determine. Nothing in this order is even remotely intended to restrict the scope of the arbitral proceedings before the Arbitral Tribunal.

31. Accordingly, both these applications are disposed of by passing the following orders: -

A. Hon'ble Mr Justice Gautam Kumar Choudhary, Former Judge of this Court, residing at Flat No. 301, Nirvana Apartment, Opposite Tagore Hill, Morabadi, Ranchi, PIN- 834008 [email-gautamhcranchi@gmail.com] is hereby appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above;

B. All contentions and objections on behalf of the respondents, including the contention regarding the non-existence of the arbitral clause, are left open for decision by the Arbitral Tribunal so constituted;

C. A copy of this order should be communicated to the learned sole Arbitrator by the advocates for the applicants within ten days from today. The applicants shall provide the parties' contact and communication particulars to the Arbitral Tribunal, along with a copy of this order;

D. The learned sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the said Act to the parties within a period of two weeks from the receipt of a copy of this order;

E. The parties shall appear before the learned sole Arbitrator on such date and at such place (at Ranchi, Jharkhand) to obtain appropriate directions with regard to the conduct of the

arbitration, including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings, etc.;

F. At the above-referred meeting, the parties shall provide a valid and functional email address, along with the mobile numbers of the respective advocates of the parties, to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

G. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to the costs.

32. Once again, it is clarified that nothing in this order is an expression or an opinion on the merits of this matter. The Arbitral Tribunal now appointed shall issue directions to the parties on how to proceed further in the matter.

33. These Arbitration Applications are disposed of in the above terms without any order for costs. Pending I.A.s, if any, stand disposed of. All concerned can act on an authenticated copy of this order.

(M.S. Sonak, C.J.)

April 10, 2026

A.F.R.

APK/VK

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