2026:DHC:7305

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment pronounced on: 31.08.2026***

**CNR No.DLHC010163772026**

\+ **ARB.P. 708/2026**

M/S RSA INFRA PROJECT PVT LTD .....Petitioner

Through: Mr. Rakesh Kumar, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Sahil and Mr. Pulkit Mehrotra, Advs.

versus

NPCC LIMITED & ANR. .....Respondents

Through: Mr. Tushar Sannu, Ms. Ankita Bhadouriya, Mr. Hardik Saxena and Ms. Diksha Punia, Advs. for NPCC.
Ms. Radhika Bishwajit Dubey, CGSC, Mr. Vanshul Pali, GP, Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Amulya Dev Mishra, Mr. Saksham Sharma, Mr. Kartik Khullar, Ms. Ayushika Mishra and Ms. Riya Garg, Advs. for R-2 (through v/c).

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter *"the A&C Act"*) seeking appointment of a Sole Arbitrator to adjudicate the disputes and differences that have arisen between the parties herein.

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FACTUAL MATRIX

2. The disputes between the parties arise out of a contract relating to the "Construction of a Limited Height Subway (LHS) in lieu of Level Crossing No. 284 and a Railway Overbridge in lieu of Level Crossing No. 283 on the Bilaspur-Jharsuguda Sections under SEC Railway, Bilaspur Division" (hereinafter, *"the Work"*).

3. The Work was the subject matter of a Notice Inviting Tender dated 23.01.2024 (hereinafter, *"the NIT"*) issued by respondent no.1. The petitioner participated in the tender process and was declared the lowest bidder. Pursuant thereto, respondent no.1 issued a Letter of Intent bearing No. 731003/SECR/2024-25/Wks/LC283-284/246 dated 12.06.2024 (hereinafter, *"the LOI"*) in favour of the petitioner for execution of the Work at a contract value of Rs.36,82,47,053.44/-. The said LOI reads as under:

By Email/Speed Post

Ref. No. 731003/SECR/2024-25/Wks/LC283-284/246 Date:- 12.06.2024

To,

M/s RSA INFRAPROJECT PRIVATE LTD.,
Shri Shyam Tower, Kavita Nagar,
Main Road Avanti Vihar Raipur C.G. 492001
Email- rsa.infra.raipur@gmail.com

Sub.: Letter of Intent (LOI) for "Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division (3rd Call)".

Ref. : 1) E-NIT vide No. 731003/SECR/23-24/590 Date: 23.01.2024.
2) Financial bid opened on 15.03.2024

Dear Sir,

This is with reference to the above cited subject work tender, we are pleased to issue the Letter of Intent (LOI) for the aforesaid work in your favor with the following terms & conditions: -

4. You shall proceed with the work and complete the work within the time frame. As per Clause 43.2 & 72.4.1 of GCC you are requested to submit CPM network/PERT Chart/Quantified Bar Chart along with the milestones and resources plan for manpower, material & Machinery to achieve the milestone for completion of the work within stipulated time within 10days from the date of issue of this LOI. This shall form a part of the agreement.
5. A formal agreement is to be executed in accordance to relevant clause No. 85 of GCC of tender document. The agreement will be signed in Five originals and the contractor shall be provided with one signed original and other Four original will be retained by the NPCC. Contractor has to provide 05(Five) no's of non-judicial stamp papers of requisite value purchased from Raipur.
6. The Contractor shall deposit the amount in the form of demand draft in favour of NPCC Ltd., payable at Raipur within Seven days from the date of issuance LOI/LOA equal to the twice the cost of tender document plus GST applicable in lieu of preparation of contract agreement.
7. All directions, instructions etc., conveyed by our representative and Client/SECR from time to time shall be followed. Contractor should adhere to the MOU between NPCC & SEC Railway.
8. All other terms and conditional as specified in the tender document shall be part of this letter of Intent.
9. You are requested to start the work immediately as per the tender conditions, contract and technical specifications.

This letter is being issued in duplicate, you are requested to accept, Sign, stamp, and return the duplicate copy as a token of your unconditional acceptance in respect of this letter of Acceptance.

Thanking you,

4. You shall proceed with the work and complete the work within the time frame. As per Clause 43.2 & 72.4.1 of GCC you are requested to submit CPM network/PERT Chart/Quantified Bar Chart along with the milestones and resources plan for manpower, material & Machinery to achieve the milestone for completion of the work within stipulated time within 10days from the date of issue of this LOI. This shall form a part of the agreement.
5. A formal agreement is to be executed in accordance to relevant clause No. 85 of GCC of tender document. The agreement will be signed in Five originals and the contractor shall be provided with one signed original and other Four original will be retained by the NPCC. Contractor has to provide 05(Five) no's of non-judicial stamp papers of requisite value purchased from Raipur.
6. The Contractor shall deposit the amount in the form of demand draft in favour of NPCC Ltd., payable at Raipur within Seven days from the date of issuance LOI/LOA equal to the twice the cost of tender document plus GST applicable in lieu of preparation of contract agreement.
7. All directions, instructions etc., conveyed by our representative and Client/SECR from time to time shall be followed. Contractor should adhere to the MOU between NPCC & SEC Railway.
8. All other terms and conditional as specified in the tender document shall be part of this letter of Intent.
9. You are requested to start the work immediately as per the tender conditions, contract and technical specifications.

This letter is being issued in duplicate, you are requested to accept, Sign, stamp, and return the duplicate copy as a token of your unconditional acceptance in respect of this letter of Acceptance.

Thanking you,

4. In terms of the LOI, the petitioner furnished a Performance Guarantee equivalent to 5% of the awarded contract value, amounting to Rs.1,84,12,354/-, through Punjab National Bank. It is the case of the petitioner that, thereafter, it mobilised its resources at the site and commenced execution of the Work.

5. The petitioner contends that, during the course of execution of the Work, it encountered various site hindrances which impeded its progress. In this regard, a joint meeting was held on 11.12.2024, wherein the petitioner raised the issue of removal of the site hindrances. The petitioner states that, instead of addressing the aforesaid issues, the respondent no.1 proceeded to issue show-cause notices dated 29.05.2025 and 30.05.2025 (hereinafter, *"the SCNs"*) against the petitioner herein.

6. By the first SCN dated 29.05.2025, the petitioner was called upon to show cause in respect of the alleged poor performance. By the second SCN dated 30.05.2025, respondent no.1 alleged non-compliance with the terms of the LOI, particularly the requirement of execution of the formal contract agreement in terms of Clause 85 of the General Conditions of Contract (hereinafter *"GCC"*). The SCN dated 30.05.2025 which has been filed as 'Document – 6' to the present petition, reads as under:

SHOW CAUSE NOTICE

BY E-MAIL / BY POST

Most Immediate

Ref No.: CZO/SECR/2025-26/LC-283-284/174 **Date: 30.05.2025**

To,

M/s RSA INFRAPROJECT PRIVATE LIMITED,
Shri Shyam Tower, Kavita Nagar,
Main Road Avanti Vihar Raipur C.G. 492001
Email- rsa.infra.raipur@gmail.com
vishal.rsa.infra@gmail.com

Name of the Work: Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division.

LOI issued to you vide No.: 731003/SECR/2024-25/Wks/LC283-284/246 Dated 12.06.2024.

This office letter vide No.: CZO/SECR/2024-25/LC-283-284/570 Dated 7.11.2024.

Whereas in reference to the above cited work, a Letter of Intent (LOI) was issued to your firm vide 731003/SECR/2024-25/Wks/LC283-284/246 Dt. 12.06.2024. Please refer to point no. 05 of this letter, which states that "A formal agreement is to be executed in accordance to relevant clause No. 85 of GCC of tender document. The agreement will be signed in five originals". However, the same is not executed / signed till date even after rigorous follow-up through multiple mode of communications including verbally / telephonically, with your representative Shri Vishal Agrawal, Director, RSA Infraproject Pvt. Ltd., Raipur. A follow-up letter vide ref. no. CZO/SECR/2024-25/LC-283-284/570 Dated 07.11.2024 was also sent in this regards. Wherein it is reiterated that as per the tender GCC clause 85.0 (i), *"The contract agreement as per prescribed Proforma as enclosed to the tender documents shall be signed at the office of the NPCC within 20 days from the date of receipt of Letter of Intent. The Contractor shall produce for signing of the Contract, appropriate Power of Attorney and the requisite documents/materials"*. Though, the compliances in this regards are yet to be done and pending only at your end.

Please also refer to the tender document's GCC clause no. 84, which states that

"The Contractor shall enter into a Contract Agreement with the NPCC within 20 days from the date of receipt of Letter of Intent or within such extended time, as may be granted by the NPCC. The cost of stamp papers, stamp duty, registration, if applicable on the contract, shall be borne by the Contractor. In-case, the contractor does not sign the agreement as above or start the work within 10 days of the receipt of letter of intent, his earnest money is liable to be forfeited and letter of intent consequently will stand withdrawn."

Whereas M/s RSA Infraproject Private Ltd. (contractor) was awarded the work of construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on Bilaspur – Jharsuguda sections under S.E.C. Railway, Bilaspur Division vide LOI dated 12.06.2024 and you have failed to execute the concerned agreement by signing it within the stipulated period.

Therefore, you are hereby finally show-caused why the contract should not be terminated and why the performance security deposit should not be forfeited.

M/s RSA Infraproject Private Ltd. is directed to submit their written reply latest by 05.06.2025, positively for taking further necessary action in the matter. You are hereby also intimated that if no reply is received latest by 05.06.2025, it will be presumed that you have nothing to submit, in the said matter. Accordingly, decision will be taken exparte and action shall be taken as deemed fit, to the extent of forfeiture of Performance Bank Guarantee, in line with tender conditions.

Yours Faithfully,

Vivek Gupta

(Vivek Gupta)
Zonal Manager

7. The petitioner relies upon the minutes dated 12.12.2024 of the joint meeting, which, *inter alia*, record that piling work in respect of A2 had been completed, while the remaining work in respect of A1 was pending on account of the S&T cable clearance. The minutes further record that a tendering process was underway for shifting of the said cables. The relevant minutes read as under:

No. SECR/HQ/ENGG/RSW/NPCC/2489 Date: 12.12.2024

Minutes of the meeting with NPCCL officials and representative of NPCCL's working contractors in the office of PCE/SECR on 11.12.2024 to review the progress of ROB/RUB works.

Members Present:

SN	Railway Officials	NPCC Officials
1.	Sri Mudit Bhatnagar (PCE/SECR)	Sri Vivek Gupta (Zonal Manager NPCCL)
2.	Sri Vishal Anand (CE/RSW/SECR)	Sri S. Prasad (DGM/NPCCL)
3.	Sri. Utkarsh Pandey (Sr. DEN East/BSP)	Sri Sandeep Kr Yadav (Engineer/NPCCL)
4.	Sri. Rakesh Prasad (AXEN/RSW/SECR)	Sri. Vishal Santwal, (M/S Sheela Construction) Sri. Vishal Agarwal (M/s RSA Infra Project Private Ltd.)

Points noted during the meeting are as below :-

Common points:-

1. NPCCL is executing 4 nos of ROBs and 3 nos of RUBs for elimination of 6 nos of MLCs (LC no. 276, 283, 284, 298, 299 & 316) in BSP-JSG section of SECR. These works are monitored by PMO office. Overall progress of the work is slow. Review of these works should be done on 2nd week of every month by NPCCL, HQ/SECR and BSP/Div officials.
2. Foundation work is delayed due to non-shifting of S&T cable and OHE mast. Weekly review meeting of NPCC officials with Sr. DSTE and Sr. DEE/TRD should be done for early clearance of S&T cable and shifting of OHE mast.
3. Sr. DEN/East/BSP informed that recently a tender is in process at Sr. DSTE's office for cable shifting work.
4. In case cable shifting is further delayed by S&T department, it is advised to carry out the cable shifting work by NPCCL by introducing NS item in the existing contract of ROB/RUB. Cable shifting work shall be done under the supervision of S&T staff of BSP divn. It should be mentioned in special condition of contract for NS item.
5. Work wise Bar chart to be submitted by NPCCL to BSP division for granting of extension of time.
6. Relieving girder fit for 40 km/h shall be adopted for all LHS work.

A) LC No. 276 (HGR-DAO, Km 551/27-29) : 1 of 3

i. ROB & RUB work sanctioned in the year 2020-21. Tender for ROB awarded on 13.10.2023. As per site condition, RUB is not feasible. NPCC to obtain the district collector consent for closure of LC No. 276 by construction of ROB only.

ii. Approach work is not started due to clearance of tree in forest and railway area. NPCC has to submit a letter to BSP division mentioning the nos. of trees to be cut for ROB work. On receipt of NPCC letter, Sr.DEN/East/BSP shall approach DFO for expediting the tree cutting, forest clearance.

iii. Foundation work of P3 could not be started due to non-grant of caution since last 4 months. 10 days caution will be arranged by railway for foundation work of pier. Necessary arrangement of manpower & machinery should be made available at site by NPCC to complete the foundation work within the given caution period.

iv. Alteration in GAD for increasing the clearance of pier from nearest track centre is in process at division and shall be approved shortly.

v. As per NPCCL girder fabrication completed, metallising is in progress, girder launching planned in Mar'25, RE wall completion by Aug'25 and commissioning of ROB by Dec'25.

B) LC No. 283 (KRL Yard, Km 575/6-8) :

i. ROB work sanctioned in the year 2020-21. Tender for ROB awarded on 12.06.2024.

ii. Pile casting of A2 is completed. A1 is balance due to S&T cable clearance. Sr. DEN/East/BSP informed that recently a tender is in process for cable shifting at Sr. DSTE's office.

iii. Land acquisition is pending. As per NPCCL, at one side of ROB Chhattisgarh State Industrial Development Corporation (CSIDC) land (State Govt land) is available. NPCCL should pursue the land acquisition with CSIDC official.

iv. NPCC requested for sanction of adopting non SV loading girders.

C) LC No. 284 (KRL Yard, Km 576/26-28) :

i. RUB work sanctioned in the year 2020-21. Tender for RUB awarded on 12.06.2024.

ii. Thrust bed drawing approved on 10.12.24. S&T Cable clearance required to start the work.

iii. RH girder fit for 40 km/h shall be adopted for box pushing.

D) LC No. 298 (BEF Yard E/E, Km 601/15-17) :

i. ROB work sanctioned in the year 2020-21. Tender for ROB awarded on 04.12.2023.

ii. Land acquisition and S&T cable clearance is required to carry out the ROB work. NPCC officials should chase the land acquisition matter with Revenue secretary for early expediting the land acquisition.

iii. NPCC requested for sanction of adopting non SV loading girders.

E) LC No. 299 (BEF Yard W/E, Km 602/17-19) :

i. RUB work sanctioned in the year 2020-21. Tender for RUB awarded on 04.12.2023.

ii. RCC box is casted. Cable clearance and land acquisition is required for further work.

iii. Land acquisition and S&T cable clearance is required to carry out the ROB work. NPCC officials should chase the land acquisition matter with Revenue secretary to sort out the issue.

iv. RH girder fit for 40 km/h shall be used for box pushing.

F) LC No. 316 (JDI Yard, Km 624/9-11) :

i. ROB & RUB work sanctioned in the year 2020-21. Tender for ROB & RUB awarded on 28.07.2023.

ii. ROB – Girder fabrication completed, metallising under progress. P2 & P3 pier casting work in progress.

iii. Land acquisition and S&T cable clearance is required to carry out the ROB work. NPCC officials should chase the land acquisition matter with Revenue secretary to sort out the issue.

iv. Approval of RCC box drawing is pending with WRD for canal crossing outside railway area. NPCC official to pursue the matter with WRD officials.

(Visha[illegible])
Chief Engineer/RSW
S.E.C. Railway

Copy to: i) PCE/SECR for kind information please.
ii) PCSTE/SECR, PCEE/ SECR for kind information and necessary action please.
iii) CBE/SECR for kind information and necessary action please.
iv) DRM/BSP for kind information and necessary action please.
v) Zonal Manager, NPCCL,Chhattisgarh Zonal Office, P4A/7G4, Sector- 27, Atal Nagar Naya Raipur, Pin - 492018
vi) Sr. DEN Co/BSP, Sr. DEN/East/BSP for information and necessary action.

8. It is not in dispute that the formal contract agreement contemplated under the tender documents was never executed between the parties. Thereafter, *vide* letter dated 20.06.2025, respondent no.1 terminated the LOI. The said termination letter reads as under:

By Email/ post

Ref. No. 731003/SECR/2025-26/LC-283-284/ 239 Date: 20.06.2025

To,

M/s RSA INFRAPROJECT PRIVATE LTD.,
Shri Shyam Tower, Kavita Nagar,
Main Road Avanti Vihar Raipur C.G. 492001
Email- rsa.infra.raipur@gmail.com

Sub: Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division: **Termination of letter of Intent -reg.**

Kind Attention: Shri Sanjay Kumar Agrawal, Director, M/s RSA Infraproject Pvt. Ltd.

Dear Sir,

With reference to above cited subject works, the works for the Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division, awarded to you vide LOI No. 731003/SECR/2024-25/Wks/LC283-284/246 Date: 12.06.2024.

As per the LOI issued to the you, the date of commencement of the project was 22.06.2024 and the stipulated date of completion of the project is **21.06.2025** (i.e. completion period of **12 months**).

As per GCC clause 84.0," ***CONTRACT AGREEMENT***

The Contractor shall enter into a Contract Agreement with the NPCC within 20 days from the date of receipt of Letter of Intent or within such extended time, as may be granted by the NPCC. The cost of stamp papers, stamp duty, registration, if applicable on the contract, shall be borne by the Contractor. In case, ***the contractor does not sign the agreement*** *as above or start the work within 10 days of the receipt of letter of intent, his earnest money is liable to be forfeited and* ***letter of intent consequently will stand withdrawn***".

As per tender GCC clause 85.0, "***MANNER OF EXECUTION OF AGREEMENT***

i. The contract agreement as per prescribed Proforma as enclosed to the tender documents shall be signed at the office of the NPCC within 20 days from the date of receipt of Letter of Intent. The Contractor shall produce for signing of the Contract, appropriate Power of Attorney and the requisite documents/materials. Unless and until a formal contract is prepared and executed, the Letter of Intent read in conjunction with the Bidding Documents will constitute a binding contract.

ii. The agreement will be signed in five originals and the Contractor shall be provided with one signed original and the other four originals will be retained by the NPCC. Contractor has to provide 05 (five) nos. of non-judicial stamp papers of requisite value purchased from Raipur.

ii. The Contractor shall deposit the amount in the form of demand draft in favour of N.P.C.C. Ltd. Payable at Raipur within seven days of issuance of LOI/LOA equal to the twice of the tender cost in lieu to the preparation of contract agreement".

From the above, it is regretted to inform you that you have failed to submit 05 (five) nos. of non-judicial stamp papers & demand draft in favour of N.P.C.C. Ltd. Payable at Raipur within seven days of issuance of LOI/LOA equal to the twice of the tender cost in lieu to the preparation of contract agreement.

A rigorous follow-up through multiple mode of communications including verbally / telephonically, is done with Shri Vishal Agrawal, Director, M/s RSA Infraproject Pvt. Ltd., in this regard. However, till date, none of these have been submitted to this office for further procedure of signing of agreement even after communicated to other representatives of M/s RSA Infraproject Pvt. Ltd. also, namely Shri Kaushal Kumar, claimed as Authorized representative, (without board resolution and other identity proofs) and Shri Kamal Solanki during their visits at NPCC's zonal office on 31.05.2025, 03.06.2025, 04.06.2025 and on subsequent dates. **Thus, neither you have done any requisite formality for preparation of contract agreement nor executed /signed the contract agreement, till date.**

Further, it is to inform that that till date, your company has also not submitted the requisite **Power of Attorney** along with the board resolution (in respect to authorized representative of M/s RSA Infraproject Pvt. Ltd.) duly signed by the authorised director(s) of the company. While, as per Tender's terms and conditions,

*"On acceptance of tender, the name of the **authorized representative(s)** of the contractor who would be responsible for taking instructions from Engineer-in-charge or his authorized representative shall be intimated by the contractor within 07 days from the date of issue of telegram/letter/telex/fax of intents by NPCC"*

. These documents are necessary to authenticate the identity and authority of the person acting and signing on behalf of the company.

We also note that **Shri Vishal Agrawal**, who has claimed himself to be the **son of Shri Bajrang Agrawal** and director of the firm, has been corresponding on behalf of M/s RSA Infraproject Pvt. Ltd. in previous communications without submission of any official documentary proof validating his authority. The same was asked multiple times to provide however, not submitted till date.

Later on, another individual, **Shri Kaushal Kumar** (claimed as employee of M/s RSA Infraproject Pvt. Ltd.,) arrived at our office on 31.05.2025 for the purpose of signing the agreement, he was just having an incomplete power of attorney which was neither duly stamped by the Director **(DIN No. was also not mentioned)** nor he produced any board resolution. We have asked for the complete documents as below: -

1. **Board Resolution** of M/s RSA Infraproject Pvt. Ltd. authorizing the designated representative to act on behalf of M/s RSA Infraproject Pvt. Ltd.for signing the agreement and executing contract-related matters.
2. **Power of Attorney** duly executed in favour of the authorised representative, clearly indicating the extent of powers delegated.
3. **Five (05) Nos. of Non-Judicial Stamp Papers** of appropriate denomination as specified in the tender conditions for execution of the agreement.
4. **Agreement Fees** as prescribed in the tender document.

But unfortunately, your representative also has failed to submit the above documents till date. This act after a delay of over 11 months not only reflects gross negligence but also raises doubts on your seriousness towards signing of the agreement.

Aforesaid acts reflect a **complete disregard for the tender's terms and conditions, contractual obligations and due legal procedures**. Such inordinate delay while finalising the name of authorized representative (through board resolution) and failure to comply with the essential documentation requirements casts serious doubts on the legitimacy and commitment of your firm in undertaking the awarded work.

Further, it is regretted to inform you that even after issuing various Show Cause Notices issued to you regarding the persistent delays, poor performance, and lack of progress in the execution of the subject project. Despite multiple opportunities and sufficient time provided, your replies to the notices have been found unsatisfactory and evasive, failing to justify the lapses and inaction on your part.

Further, it is observed that no concrete or effective steps have been taken by you to bring the project back on track or to mitigate the delays caused. The lack of seriousness, initiative, and corrective actions from your end has resulted in undue and unacceptable delay in the project, which is in gross violation of the terms and conditions of the contract. Your inability to mobilize adequate resources and non- seriousness towards the completion of the work has left us with no option but to proceed with termination.

It is to be note that despite repeated instructions, reminders, and opportunities for course correction, your performance has remained unsatisfactory. The slow progress of work, lack of resources and manpower, and overall disinterest have seriously hampered the project and caused considerable delay, leading to loss of time & resources and cost overrun also which directly or indirectly caused loss to the government exchequer.

In view of the above and in accordance with **tender GCC Clause 72.2, 72.4, 84.0, 85.0(i), 85.0(ii) and 85.0(ii)** your LOI is hereby **terminated with immediate effect**.

This termination will be effective as of today, June 20, 2025.

The remaining unexecuted portion of the said work would be carried out at the risk and cost of the M/s RSA INFRAPROJECT PRIVATE LIMITED. The letter for Joint measurement and other obligations will follow.

Further, necessary action shall be taken to recover any additional losses or damages caused to this organization due to your non-performance.

You are hereby instructed to vacate the site, remove all men, machinery, and materials within **seven (7) days** of the date of this order (if any). If any material left at site, then NPCC have the power to take possession of site and any materials, constructional plant, implements, stores, etc. Thereon.

Please feel free for any questions or concerns regarding this termination, if any.

We regret having to take this step and wish you the best in your future endeavours.

Sincerely,

Vivek Gupta

Zonal Manager,
Chhattisgarh Zone,
NPCC Limited

Vivek Gupta
Zonal Manager
NPCC Limited
(A Govt. of India Enterprise)
Chhattisgarh Zonal Office
Naya Raipur (Chhattisgarh)

Copy to: -

2) The C.E. (RSW), SECR, Bilaspur; For kind info, please.
3) The HOD (Projects), NPCC Ltd., C.O., Gurugram; for kind info. please.
4) OSD to CMD, PS to Director (Engg.), Director (F), Director(C&HRD), NPCC Ltd., C.O., Gurugram; for kind info. please.
5) The Sr. DEN (East), SECR, Bilaspur Division, Bilaspur; for kind info, please.
6) Sr. Manager (F), NPCC Ltd., CZO, Raipur; for kind info. & immediately needful please.

9. The aforesaid termination letter further provided that the remaining unexecuted portion of the Work would be carried out at the risk and cost of the petitioner. Thereafter, the respondent no.1 also directed Punjab National Bank to encash the Performance Guarantee, which had been furnished by the petitioner.

10. Subsequently, *vide* letter dated 25.08.2025, respondent no.1 informed the petitioner that the balance Work would be taken up at the risk and cost of the petitioner. Thereafter, the petitioner, *vide* its letter dated 08.09.2025, objected to the aforesaid action and, *inter alia*, contended that the post-termination joint measurement bill remained unpaid and that the validity of the termination itself was in dispute. The letter dated 25.08.2025 reads as under:

Ref No.: CZO/SECR/2025-26/LC-283-284/515 Date: 25.08.2025

BY HAND/BY POST/BY EMAIL

To,

M/s RSA INFRAPROJECT PRIVATE LTD.,
Shri Shyam Tower, Kavita Nagar,
Main Road Avanti Vihar Raipur C.G. 492001
Email- rsa.infra.raipur@gmail.com

Sub: Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division- **Intimation of tendering for balance works, on Risk and Cost of M/s RSA INFRAPROJECT PRIVATE LTD.**-Reg.

Ref: 1) LOI issued to you vide No. 731003/SECR/2024-25/Wks/LC283-284/246 Dt. 12.06.2024.
2) Termination notice issued to you vide our letter No. 731003/SECR/2025-26/LC-283-284/239 Dated 20.06.2025.

Sir,

Please refer to the above cited subject matter and termination notice issued to your firm vide No. 731003/SECR/2025-26/LC-283- 284/239 Dated 20.06.2025, wherein, it was mentioned that, "the remaining unexecuted portion of the said works would be carried out at the risk and cost of M/s RSA INFRAPROJECT PRIVATE LTD."

Now, vide this letter, you are hereby notified that the balance works for the Construction of LHS in lieu of L.C. NO. 284 & ROB in lieu of L.C. no. 283 on BILASPUR-JHARSUGUDA sections under S.E.C. Railway, Bilaspur Division are being taken up by NPCC through invitation of tender at the risk and cost of M/s RSA INFRAPROJECT PRIVATE LTD.

This is for your information and record please.

Thanking You,

Yours Sincerely,

Vivek Gupta

Zonal Manager

11. Thereafter, in terms of Clause 76(ii) of the GCC, pre-institution

Mediation was initiated by the petitioner before the Delhi High Court Legal Service Committee *vide* application dated 07.10.2025. The same is filed as 'Document -11' to the present petition.

12. The aforesaid exercise of pre-institution Mediation turned out to be a non-starter, inasmuch as the respondent no.2 failed to appear, and the respondent no.1 *vide* its email dated 27.11.2025, conveyed its unwillingness to participate in the Mediation, stating as under:

> *"To,*
> *The Hon'ble Secretary,*
> *DHCLSC,*
> *Ground Floor, Ancillary Block,*
> *Delhi High Court, New Delhi.*
>
> *Sub.: Notice in the matter of M/s RSA Infraprojects Pvt. Ltd. & Anr. "N.D.O.H. 27.11.2025"*
> *Sir,*
> *I, Vivek Gupta, (Emp. No.- 204407) Zonal Manager, Chhattisgarh Zone, NPCC Ltd. , (Opposite Party No. -1) appear in person at the venue (mentioned in the email and addressed as above) on today, i.e. 27.11.2025 at 11:00 AM, in compliance to the Notice dated 30.10.2025, received from DHCLSC vide email dated October 30,2025.*
>
> *In this context, it is to submit that M/s NPCC Limited is not willing to participate in the said Pre-Institution mediation proceedings and accordingly conveys NPCC's decision regarding REFUSAL to participate in the mediation process initiated by the applicant i.e. M/s RSA Infraprojects Pvt. Ltd. in the subject matter.*
>
> *This is for your kind information and records, please.*
> *Thanking you.*
>
> *Your's faithfully*
> *Vivek Gupta,*
> *Zonal Manager,*
> *Chhattisgarh Zone,*
> *NPCC Ltd.*
> *Place: Ancillary Block, Delhi High Court campus.*
> *Date: 27.11.2025."*

13. Thereafter, by way of an invocation notice dated 29.01.2026, issued under Section 21 of the A&C Act, the petitioner invoked arbitration and proposed the name of a Sole Arbitrator who could be appointed to adjudicate the disputes between the parties. The same was not responded to by the respondents and consequently, the present petition has been filed.

RELEVANT CONTRACTUAL PROVISIONS:

14. Clause 5.3 of the "Pre-Qualification and Instructions to the Bidders", forming the part of the Tender Document, provides as under:

> 5.3 **Notification of Award and Signing of Agreement.**
>
> a. bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, fax, letter, e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Part I *General Conditions of Contract* called the "Letter of Acceptance") will state the sum that the Employer will pay to the Contractor in consideration of the execution, (hereinafter and in the Contract called the "Contract Price") and completion period.
>
> b. The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security.
>
> c. The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and the successful Bidder after the performance security is furnished.

15. Clause 84 of the GCC reads as under:

> **84.0 CONTRACT AGREEMENT**
>
> The Contractor shall enter into a Contract Agreement with the NPCC within 20 days from the date of receipt of Letter of Intent or within such extended time, as may be granted by the NPCC. The cost of stamp papers, stamp duty, registration, if applicable on the contract, shall be borne by the Contractor. Incase, the contractor does not sign the agreement as above or start the work within 10 days of the receipt of letter of intent, his earnest money is liable to be forfeited and letter of intent consequently will stand withdrawn.

16. Clause 85 of the GCC reads as under:

85.0 MANNER OF EXECUTION OF AGREEMENT

i. The contract agreement as per prescribed Proforma as enclosed to the tender documents shall be signed at the office of the NPCC within 20 days from the date of receipt of Letter of Intent. The Contractor shall produce for signing of the Contract, appropriate Power of Attorney and the requisite documents/materials. Unless and until a formal contract is prepared and executed, the Letter of Intent read in conjunction with the Bidding Documents will constitute a binding contract.

ii. The agreement will be signed in five originals and the Contractor shall be provided with one signed original and the other four originals will be retained by the NPCC. Contractor has to provide 05 (five) nos. of non-judicial stamp papers of requisite value purchased from Raipur.

ii. The Contractor shall deposit the amount in the form of demand draft in favour of N.P.C.C. Ltd. Payable at Raipur within seven days of issuance of LOI/LOA equal to the twice of the tender cost in lieu to the preparation of contract agreement.

17. Clause 76 i.e. the dispute resolution Clause of the GCC reads as under:

76.0 ARBITRATION -

Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled through following mechanism:

i) Firstly, the aggrieved party shall write a letter to the other party detailing its grievances and calling upon the other party to amicably resolve the dispute by convening a joint meeting. Accordingly, the parties as per their convenience shall jointly convene the said meeting(s), wherein minutes of the said meeting(s) shall be prepared and countersigned by all the parties. It is mandatory to prepare minutes of meeting(s) and to be countersigned by all the parties, irrespective of the outcome of the said meeting(s).

ii) In the event the parties are unable to reach on any settlement in the said meeting(s), then the aggrieved party shall mandatory resort to pre-litigation mediation mechanism with Delhi High Court Mediation Cell, New Delhi.

iii) It is only upon failure of the pre-litigation mediation mechanism with Delhi High Court Mediation Cell, than the aggrieved party shall resort to resolution of disputes through arbitration of a Sole Arbitrator. The appointing authority of Sole Arbitrator is CMD, NPCC Ltd., to which neither of the parties have any objection nor they shall ever object.

iv) Subject to the parties agreeing otherwise, the Arbitration proceedings shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 (amended as on date).

v) It is also acknowledged and accepted that NPCC Ltd. is only working as Intermediary between the Sub-Contractor/Sub-Consultant and the Principal Employer/Client, thus in the event, any dispute arises under the present agreement and referred to Arbitration for adjudication, then subject to corresponding clause in the Contract/ Agreement/ Work Order/ Arrangement between Principal Employer/Client & NPCC Ltd., Principal Employer/Client shall also be made party to the said Arbitration proceedings. Also the award including costs if any passed against NPCC Ltd. & costs incurred in the proceedings shall be the sole responsibility of Principal Employer/Client. The said clause if found inapplicable, even then the other terms of the Arbitration Clause shall survive and shall be acted upon.

vi) The place/seat of arbitration shall be Delhi and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made, in Delhi. The arbitral procedure shall be conducted in English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian law. The award of the arbitrator shall be final and conclusive and binding upon the Parties.

vii) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of India and the Parties submit to sole & exclusive jurisdiction of courts at New Delhi.

76.1 JURIDICTION

The agreement shall be executed at Raipur on non-judicial stamp paper purchased in Raipur and the Court (s) at Raipur alone will have jurisdiction to deal with matters arising there from, to the exclusion of all other courts.

SUBMISSIONS OF THE PARTIES:

18. Learned counsel for the petitioner submits that the existence of an arbitration agreement between the parties is borne out from a conjoint reading of the tender documents and the LOI. In support of the said submission, it is contended as follows:

(i) Clause 5.3(b) of the "Pre-Qualification and Instructions to the Bidders" provides that the notification of award itself constitutes formation of the contract, subject only to furnishing of the performance security. The said condition stood satisfied upon the petitioner furnishing the requisite performance security on 27.06.2024.

(ii) Clause 85(i) of the GCC contains an express deeming provision whereby, until execution of the formal contract, the LOI read with the bidding documents constitutes a binding contract between the parties.

(iii) Clause 8 of the LOI specifically provides that all the terms and conditions contained in the tender documents shall form part of the LOI.

(iv) Clause 9 of the LOI required the petitioner to commence the work immediately in accordance with the tender conditions. The petitioner accordingly commenced the work and also furnished the requisite performance security.

(v) The respondent no.1's own conduct *viz*. issuance of Show Cause Notice(s), termination of the LOI in accordance with GCC Clauses 72.2, 72.4, 84.0 and 85.0, and the appropriation of performance bank guarantee thereafter, itself implicitly proceeds on a footing that a binding contract subsisted between the parties.

19. The petitioner relies upon the judgment rendered by the Supreme Court in ***UNISSI (India) (P) Ltd. v. Post Graduate Institute of Medical Education and Research***, (2009) 1 SCC 107.

20. It is the case of the petitioner that, having regard to the peculiar nature of the arbitration clause, respondent no. 2 is liable to be joined as a party to the arbitral proceedings. It is contended that the question as to whether respondent no. 2, being a non-signatory to the arbitration agreement, is bound by the same, is required to be determined by the Arbitral Tribunal, in terms of the judgment of the Constitution Bench of the Supreme Court in ***Cox and Kings Limited v. SAP India Private Limited and Another***, (2024) 4 SCC 1.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

21. Learned counsel for respondent no. 1, on the other hand, vehemently submits that no concluded contract came into existence between the parties and, consequently, no arbitration agreement could have arisen therefrom. It is contended that the acceptance contemplated under Clause 1 of the LOI was expressly conditional, and therefore, the petitioner cannot claim any contractual rights on the basis thereof.

22. It is further submitted that the formal agreement contemplated under Clauses 84 and 85 of the GCC was never executed between the parties. Strong reliance is placed on the judgment in ***Maharashtra State Electricity Distribution Company Limited (MSEDCL) & Ors vs R Z Malpani***, 2026 SCC OnLine SC 553, to contend that the LOI and the terms of the tender did not fructify into a formal contract and that the LOI was, at best, a precursor thereto, in the nature of a "*promise to make a promise and not a promise itself*". It is, therefore, contended that no concluded agreement came into existence between the parties.

23. Learned counsel for respondent no. 2 raised a distinct objection. It was submitted that respondent no. 2 has no independent contractual relationship with the petitioner and that its relationship with respondent no. 1 is separate and is governed by a Memorandum of Understanding dated 11.03.2021.

24. Reliance is placed on Clauses 2.1 and 2.2 of the aforesaid Memorandum of Understanding, which read as under:

2. **Terms and conditions**

2.1 Execution of work, appointment of contractor, consultants and suppliers shall be the responsibility of NPCC.

2.2 NPCC shall be fully responsible for satisfactory performance of implementation agencies.

25. Reliance is further placed on Clause 6.1 of the aforesaid Memorandum of Understanding, which reads as under:

6.0 **Arbitration:**

6.1 In case of any dispute between NPCC and its contractors, the arbitration and legal issues will be dealt with by NPCC. However, the issues of sharing payments towards arbitration and court awards/ expenses between Railway and PSU will be decided mutually on merits of each case, depending upon whether certain component of award is attributable to negligence on the part of PSU or otherwise. However, in case certain components of arbitration cost are attributable to the PSU, the total liability of the PSU will be limited to 10% of its consolidated management fee. The arbitration will be as per Arbitration and Conciliation Act - 1996 including amendment made in 2015 and any subsequent amendments therof.

26. On the basis of the aforesaid clauses, it is urged that no dispute can be said to exist between the petitioner and respondent no. 2. It is further contended that, in any event, if the disputes are found to be referable to arbitration, the arbitration would necessarily be bilateral and respondent no. 2 cannot be made a party thereto.

ANALYSIS AND CONCLUSION

Scope of Scrutiny under Section 11 of the A&C Act:

27. The scope of scrutiny under Section 11 of the A&C Act is confined to examining whether, *prima facie*, an arbitration agreement exists between the parties. This has been authoritatively laid down by the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, (2024) 12 SCC 1; and

In Re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, (2024)6 SCC 1.

28. It is noticed that, in ***Malpani*** (supra), upon which reliance has been placed by the respondent no.1, the Supreme Court observed as under:

> *"21. As such, the pronouncement of this Court in SBI General Insurance Co. Ltd. (Supra) lays down a clear and comprehensive explanation about the scope of examination at the stage of Section 11 proceedings: it is limited to finding a prima facie existence of arbitration agreement and nothing beyond it. Questions of 'accord and satisfaction', limitation, dishonesty and frivolity, arbitrability of the subject-matter are to be left to the adjudication by the arbitral tribunal under Section 16 of the 1996 Act which is a reflection of the doctrine of 'KompetenzKompetenz' or 'compétence de la compétence'. It is therefore incumbent upon us to only examine the prima facie existence of an arbitration agreement.*
>
> *XXX XXX XXX*
>
> *41. Similar is the case of the judgement in UNISSI (India) (P) Ltd. (Supra) relied upon by the Appellant where the tender documents contained an arbitration clause and the tender offer of the Appellant therein was accepted and the Appellant therein acted upon the said acceptance and made supply of oxymeters required under the tender even though no formal contract was signed between the parties. In such context, the Court held that the arbitration agreement contained in the tender was applicable and dispute between the parties ought to be referred to an arbitrator. In the facts of the present case, the terms of the tender itself have never been worked upon by the Respondent. The Work Order was never issued by the Appellant and the sites were never handed over by the Appellant. The Respondent has submitted bank guarantees pursuant to the LOI, which at best is a preliminary requirement as a precursor to the Work Order being issued. As discussed above, the LOI in the instant case was indicative of a preliminary document in course of the contract and was not intended to be an end-all-be-all contract between the parties, it did not create contractual obligations or legal relationship between them."*

Whether an arbitration agreement exists notwithstanding the non-execution of the formal contract:

29. Section 7 of the A&C Act reads as under:

> *"Arbitration Agreement - 1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*
>
> *(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*
>
> *(3) An arbitration agreement shall be in writing.*
>
> *(4) An arbitration agreement is in writing if it is contained in—*
>
> *(a) a document signed by the parties;*
>
> *(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or*
>
> *(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*
>
> *(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."*

30. In the present case, it is important to note that Clause 5.3(b) of the "Pre-Qualification and Instructions to the Bidders" expressly provides that the notification of award shall constitute formation of a contract, subject only to the furnishing of performance security. The language of the provision is unambiguous. Thus, in terms of said Clause 5.3(b), the notification of award, *viz.*, the letter of acceptance, constitutes a contract upon fulfilment of the 'sole stipulated condition', namely, furnishing of the performance security.

31. The formal agreement contemplated under Clause 5.3(c) of the "Pre-Qualification and Instructions to the Bidders" was to be executed thereafter, consequent upon a contract having already been formed. In the present case, the Performance Guarantee of Rs.1,84,12,354/- was admittedly furnished on

27.06.2024 and was retained by respondent no.1. In fact, respondent no.1 proceeded to encash the said Performance Guarantee after issuance of the termination letter dated 20.06.2025. Thus, on the express terms of the tender documents, the sole condition stipulated for the constitution of the contract stood duly satisfied.

32. Clause 85.0(i) of the GCC reinforces the aforesaid conclusion. It expressly stipulates that *"unless and until a formal contract is prepared and executed, the Letter of Intent read in conjunction with the Bidding Documents will constitute a binding contract"*. The provision is, in substance, a deeming provision, whereby the parties have expressly agreed, in writing, as to what would constitute a binding contract in the absence of a formally executed agreement.

33. Reference to the LOI is also instructive. Clause 8 thereof specifically provides that *"all other terms and conditions as specified in the tender documents shall form part of the Letter of Intent"*. Significantly, the LOI expressly refers to Clause 85 of the GCC, which contains the aforesaid deeming provision. Equally significant is the fact that the LOI contains no independent dispute resolution clause of its own, much less any provision that is inconsistent or in conflict with Clause 76 of the GCC.

34. The aforesaid circumstances unmistakably demonstrate that, *prima facie*, a contract exists between the parties. Further, in terms of Clause 85.0(i), pending execution of the formal contract, the Letter of Intent, in conjunction with the bidding documents, constitutes the binding contract.

35. The dispute resolution clause, i.e. Clause 76, admittedly forms part of the bidding documents. It is also significant that the conduct of the parties has been consistent with the aforesaid position. It is a matter of record that

the petitioner furnished the Performance Guarantee, mobilised its resources at the site, and proceeded to partly execute the works.

36. The Joint Minutes of Meeting dated 12.12.2024 also record that certain works had been executed by the petitioner. Further, the termination of the contract itself was premised upon Clauses 72.2, 72.4, 84.0 and 85.0 of the GCC, thereby demonstrating that the parties acted on the basis of the terms and conditions contained in the GCC.

37. A party which terminates a contract by invoking its contractual provisions, appropriates the Performance Guarantee, and reserves its right to recover amounts towards risk and costs under the contract, cannot simultaneously be heard to contend, for the purpose of resisting reference to arbitration, that no contract ever came into existence.

38. The position that emerges is squarely covered by the judgment of the Supreme Court in ***UNISSI (India)*** (supra). In that case, the tender, which contained an arbitration clause, was accepted, and supplies were thereafter made and received, although the formal agreement was never executed. The Supreme Court, in the said judgment, observed as under:

> *"16. It is an admitted position that the appellant had sent the agreement containing the arbitration clause, as per the format provided by PGI, after duly signing the same on requisite value of stamp paper for signing of the same by PGI. PGI though admittedly received the same, did not send back the agreement to the appellant after signing it as per the agreement between the parties. PGI admittedly had used the machines for about an year and thereafter returned the same to the appellant. Subsequently, the bank guarantee furnished by the appellant for Rs 2,13,160 and the earnest money deposit of Rs 45,000 was encashed and forfeited by PGI.*
>
> *17. In view of the aforesaid facts and the correspondences between the parties, particularly the tender offer made by the appellant dated 15-1-2001 and supply order of PGI dated 29-9-2002, and, in our view, to constitute an arbitration agreement between the parties and the action taken on behalf of the appellant and in view of Section 7 of the Act and considering the principles laid down by the aforesaid two decisions of this Court, as noted herein earlier, we are of the*

view that the arbitration agreement did exist and therefore the matter should be referred to an arbitrator for decision. That apart, as we have already noted hereinearlier that in this case, the documents on record, in our view, apparently show supply of materials by the appellant and acceptance thereof by PGI in pursuance of the tender enquiry by PGI, wherein tender of the appellant containing an arbitration clause was admittedly accepted by the respondent. In that view of the matter, it cannot be said that PGI should now be allowed to wriggle out from the arbitration agreement between them.

18. We may reiterate that in this case admittedly the documents which are on record apparently show supply of the material by the appellant to PGI and acceptance thereof by PGI in pursuance of the tender enquiry by them wherein tender of the appellant containing the arbitration clause was admittedly accepted by PGI. Accordingly, we hold that arbitration agreement did exist and, therefore, dispute between the parties would be referred to an arbitrator for decision.

19. Therefore, considering the above aspects of the matter in this case, we must come to this conclusion that although no formal agreement was executed, the tender documents indicating certain conditions of contract contained an arbitration clause. It is also an admitted position that the appellant gave his tender offer which was accepted and the appellant acted upon it. Accordingly, we are of the view that the learned Additional District Judge, Chandigarh erred in holding that there did not exist any arbitration agreement between the parties and, therefore, the order passed by him is liable to be set aside."

39. The present case stands on an even stronger footing than ***UNISSI (India)*** (supra), inasmuch as, in the present case, the tender documents themselves contain an express stipulation, *viz.*, Clauses 5.3(b) and 85.0(i), which specifically determine the point at which the contract comes into existence.

Decision in the case of *NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.*, (2024) 7 SCC 174 and *Maharashtra State Electricity Distribution Company Limited (MSEDCL) & Ors vs R Z Malpani*, 2026 SCC OnLine SC 553.

40. Reliance on the part of the respondent no.1 on the aforesaid decisions is misconceived. Both the aforesaid decisions apply the settled principles of Section 7(5) of the A&C Act enunciated by the Supreme Court in ***M.R.***

Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696. The said judgment, *inter alia*, holds as under:

> *"16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.*
> *17. We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.*
>
> * * *
>
> *24. The scope and intent of Section 7(5) of the Act may therefore be summarised thus:*
> *(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:*
> *(1) the contract should contain a clear reference to the documents containing arbitration clause,*
> *(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,*
> *(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the*

contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties."

41. In ***Zillion Infraprojects*** (supra), the arbitration clause was contained not in the tender issued by NBCC to the respondent/contractor, but in a separate, anterior tender issued by a third party, namely, Damodar Valley Corporation, to NBCC. The case was, therefore, clearly one involving two distinct contracts, unlike the present case. Moreover, in the said case, the LOI itself contained a dispute resolution clause which was at variance with the terms and conditions of the tender.

42. In the present case, the dispute resolution clause, *viz.*, Clause 76 of the

GCC, forms part of the very same tender issued by respondent no.1 to the petitioner. The contractual arrangement is, throughout, between the same parties and constitutes a single contractual framework. It is also noticed that the LOI contains no independent dispute resolution clause. Rather, Clause 8 thereof expressly provides that "*all other terms and conditions as specified in the tender document shall be part of the Letter of Intent*". As such, the present case falls within the ambit of the scenario envisaged in paragraphs 16 and 17 of ***M.R. Engineers*** (supra).

43. Even assuming that the terms and conditions referred to in the NIT (including the dispute resolution clause) are in the nature of standard terms and conditions, distinct from the LOI, even then the dicta laid down in paragraph 24(v) of ***M.R. Engineers*** (supra) would be attracted inasmuch as Clause 8 of the LOI stipulates that respondent no.1's own conditions of part of the LOI; Clause 85.0(i) then independently records the parties' agreement that the LOI read with the Bidding Documents constitute the binding contract.

44. The judgment in ***Malpani*** (supra) is also clearly distinguishable in the facts and circumstances of the present case. In that case, MSEDCL issued an LOI to the successful bidder and the requisite bank guarantees were also furnished. However, no work order was ever issued, the sites were never handed over, no work was ever commenced or performed, and the formal agreement was never executed. The contractor thereafter terminated the contract and invoked the arbitration clause contained in the tender documents.

45. It was in that context, that the Supreme Court in ***Malpani*** (supra) held that no arbitration agreement existed on two principal grounds. First, the

LOI was held to be "*a promise to make a promise and not a promise itself and that no agreement had concluded between the parties*", as its issuance was contingent upon the subsequent issuance of a work order. Since no work order was ever issued, the LOI did not create a binding contractual relationship between the parties. This aspect has been discussed in Paragraphs 33 to 36 of ***Malpani*** (supra).

46. Further, the language of the LOI in the said case, was also peculiar and provided that terms and conditions of the contract as per the reference documents shall be interpreted by reading together with them the terms of the LOI itself and in case of conflict, the terms of the LOI shall prevail. The same has been taken note in Paragraph 25 of the said judgment. In this backdrop, it was concluded that the absence of any arbitration/dispute resolution clause in LOI, had a bearing on the issue as to whether there existed an arbitration agreement. The said judgment, *inter alia*, reads as under:

> *"**39.** Although this Court in NBCC (India) Ltd. (Supra) was dealing with a factual situation which was quite similar to the instant case, the reasons why the Court interfered with the appointment of an arbitrator in the said case were twofold. Apart from the fact that a general reference in the letter of intent to an arbitration clause contained in the tender documents was found to not be sufficient for its incorporation, the second reason was that the letter of intent in that case had a separate dispute resolution clause which limited redressal of disputes to civil courts having jurisdiction of Delhi alone. Even then, the law laid down in respect of incorporation of arbitration clauses contained in tender documents by means of reference in the letter of intent is squarely applicable to the facts of the instant case. The LOI in the instant case makes a reference to the Tender documents contained in the following terms:*
>
> > *"Notwithstanding that reference are given above, the terms and conditions and specifications of contract shall be interpreted by reading together the terms and conditions, specifications and contents of this Letter of intent as below. In case of any deviations with the contents of this Letter of*

> *intent from corresponding conditions in the above said tender specifications or contents of the letter under reference as read and interpreted up to date, the contents of this Letter of intent shall prevail."*
>
> *In our view, this is a case of 'reference' and not 'incorporation'. There is no mention of any arbitration or dispute resolution clause in the LOI itself, neither does it purport specific incorporation thereof from the tender documents. As such, the arbitration clause contained in the Tender documents could not be said to have been incorporated in the LOI to evince the existence of an arbitration agreement between the parties on its conjoint reading with the Tender documents."*

47. As noticed, in the present case, the position is materially different. The petitioner not only furnished the Performance Guarantee, but also mobilised its resources at the site and partly executed the works. The Joint Minutes of Meeting dated 12.12.2024 record that certain works had in fact been executed by the petitioner. Further, Clause 5.3(b) of the tender documents expressly provides that the Notification of Award constitutes formation of the contract, subject only to furnishing of the Performance Guarantee, which condition stood duly satisfied. Clause 85.0 (i) of the GCC further expressly stipulates that, pending execution of the formal agreement, the LOI read in conjunction with the Bidding Documents constitutes a binding contract.

48. Thus, unlike in ***Malpani*** (supra), the present case involves not merely an LOI and furnishing of bank guarantees, but a contract which, on the express terms of the tender documents, had already come into existence and was thereafter acted upon by the parties. In the present case, the LOI was not merely a preliminary or intermediate step preceding the issuance of a work order. On the contrary, the LOI itself stipulated the date of commencement of the work, *viz.*, ten days from the date of its issuance, and specified the

period for completion. Significantly, the work was in fact commenced and partly executed by the petitioner, unlike in ***Malpani*** (supra), where no work was ever commenced or performed.

49. Most significantly, the tender framework in ***Malpani*** (supra) contained no provision comparable to Clauses 5.3(b) or 85.0(i) of the GCC, as in the present case. On the contrary, in ***Malpani*** (supra), the definition of contract was expressly anchored to the execution of the formal contract agreement. The present case stands on a fundamentally different footing. Clauses 5.3(b) and 85.0(i) operate as deeming provisions, expressly stipulating that the contract comes into existence upon issuance of the Notification of Award, subject only to furnishing of the Performance Security. Further, Clause 85.0(i) expressly provides that, pending execution of the formal agreement, the LOI read in conjunction with the Bidding Documents shall constitute a binding contract.

50. Importantly, also in the present case, the very termination of the LOI is by taking recourse to the provisions of the GCC, which pre-supposes that there existed a contractual relationship between the parties.

51. In the circumstances, ***Malpani*** (supra), which itself reiterates that a Court ought to decline reference to arbitration only in the rarest of rare cases, is of no assistance to the respondents herein. It is also significant to note that, in paragraph 40 of ***Malpani*** (supra), the Supreme Court itself referred to its judgment in ***Glencore International AG v. Shree Ganesh Metals***, 2025 SCC OnLine SC 1815, wherein the non-execution of a contract containing an arbitration clause was held not to invalidate the arbitration agreement where the contract had been acted upon by the parties *ad idem*, as evidenced by their communications and conduct. The Court in

Glencore (supra) went on to hold that non-signing of the contract containing the arbitration agreement cannot invalidate the arbitration agreement which is in writing and the parties were *ad idem* in respect of the agreement.

52. It is also of no avail to the respondents to rely upon the reference in Clause 1 of the LOI that "*the same has been accepted conditionally*". A plain reading of the said clause makes it clear that the only condition contemplated therein was the "verification of documents". It was not contended that any discrepancy was found in the documents on verification, and the termination of the contract was itself premised on an entirely different ground.

53. As regards the peculiar facts and circumstances which prevented the execution of the formal agreement, it is neither necessary nor permissible for this Court, at the stage of a petition under Section 11, to adjudicate upon or resolve that controversy. Suffice it to state that, having regard to the express language of Clauses 5.3(b) and 85.0(i), it is evident, *prima facie*, that a binding contract existed between the parties, of which Clause 76(i), containing the dispute resolution mechanism, formed an integral part.

54. As regards the objection raised by respondent no.2, Clause 76 (v) of the GCC expressly acknowledges that NPCC acts as an intermediary between the contractor/sub-contractor and the Principal Employer/Client. It further provides that, in the event any dispute arising under the agreement is referred to arbitration, the Principal Employer/Client shall also be made a party to the arbitral proceedings, subject to the corresponding provision in the contract between the Principal Employer/Client and NPCC.

55. As such, *prima facie*, the present case is not a case where the respondent no.2 is rank stranger to the arbitration agreement and/or the

underlying transaction.

56. Be that as it may, objections raised by the respondent no.2 as to whether it is liable to be impleaded in the arbitral proceedings or not, is an aspect that can be agitated before the arbitral tribunal in terms of the dicta laid down by the Supreme Court in ***Cox and Kings*** (supra). The relevant observations are as under:

> *"163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.*
>
> * * *
>
> *165. In Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd. [Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671 : (2021) 3 SCC (Civ) 307] , a Bench of three Judges of this Court was called upon to decide an appeal arising out of a petition filed under Section 11(6) of the Arbitration Act for appointment of sole arbitrator. The issue before the Court was the determination of existence of an arbitration agreement on the basis of the documentary evidence produced by the parties. This Court prima facie opined that there was no conclusive evidence to infer the existence of a valid arbitration agreement between the parties. Therefore, the issue of existence of a valid arbitration agreement was referred to be decided by the Arbitral Tribunal after conducting a detailed examination of documentary evidence and cross-examination of witnesses.*
>
> *166. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the referral court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , this Court observed that there are*

distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal : (Shin-Etsu Chemical Co. case [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , SCC p. 267, para 74)

> *"74. … Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not valid, 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."*

* * *

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

* * *

170. In view of the discussion above, we arrive at the following conclusions:

* * *

170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement; and"

IT IS INCUMBENT ON THIS COURT TO APPOINT AN INDEPENDENT ARBITRATOR

57. Clause 76(iii) of the GCC contemplates that the appointing authority for the sole arbitrator would be the CMD of NPCC Limited/ respondent no.1 herein. The law on such unilateral appointment stipulations has been recently restated in view of Section 12(5) read with the Seventh Schedule to the A&C Act in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India***, 2026 SCC OnLine SC 7, wherein, after considering the earlier decisions of the Supreme Court on the issue, the Court, *inter alia*, observed as under:

"52. *In TRF (supra), the arbitration agreement stated that any dispute or difference between the parties in connection with the agreement shall be referred to the sole arbitration of the Managing Director or his nominee. The issue before this Court was whether the Managing Director, after becoming ineligible by operation of law, is still eligible to nominate an arbitrator.*

In this context, a three Judge Bench of this Court categorically held that if any person falls under any of the categories mentioned in the Seventh Schedule, he would be ineligible to be appointed as an arbitrator. In the facts of the case, it was held that the Managing Director, by virtue of sub-section (5) of Section 12, acquired the disqualification under the Seventh Schedule. Thus, as he became ineligible by operation of law to act as an arbitrator, he could not have nominated another person as an arbitrator. The relevant observations read thus:—

"54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of

law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."

(Emphasis supplied)

53. *In a similar fact situation wherein the arbitration agreement empowered the Chairman and Managing Director of the respondent to appoint a sole arbitrator, the issue before this Court in Bharat Broadband (supra) was whether the CMD, after becoming ineligible by operation of law, is still eligible to appoint an arbitrator.*

The Court held that where a person falls within any of the categories set out in the Seventh Schedule, which could be by virtue of a relationship with the parties, or their counsel, or the subject-matter of the dispute, such a person becomes ineligible to be appointed as an arbitrator. The ineligibility could be removed after dispute has arisen, and only if the parties waive the applicability of the provision by an "express agreement in writing". The arbitrator becomes de jure unable to perform his function as he falls within the categories mentioned in the Seventh Schedule. The relevant observations read thus:—

"15. Section 12(5), on the other hand, is a new provision which relates to the de jure inability of an arbitrator to act as such. Under this provision, any prior agreement to the contrary is wiped out by the non obstante clause in Section 12(5) the moment any person whose relationship with the parties or the counsel or the subject-matter of the dispute falls under the Seventh Schedule. The sub-section then declares that such person shall be "ineligible" to be appointed as arbitrator. The only way in which this ineligibility can be removed is by the proviso, which again is a special provision which states that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) by an express agreement in writing. What is clear, therefore, is that where, under any agreement between the parties, a person falls within any of the categories set out in the Seventh Schedule, he is, as a matter of law, ineligible to be appointed as an arbitrator. The only way in which this ineligibility can be removed, again, in law, is that parties may after disputes have arisen between them, waive the applicability of this sub-section by an "express agreement in writing". Obviously, the "express agreement in writing" has reference to a person who is interdicted by the Seventh Schedule, but who is stated by parties (after the disputes have arisen between them) to be a

person in whom they have faith notwithstanding the fact that such person is interdicted by the Seventh Schedule."

(Emphasis supplied)

54. *We may also look into the decision of this Court in Perkins Eastman (supra), where the arbitration clause empowered the Chairman and Managing Director of the respondent to appoint a sole arbitrator. Following TRF (supra), this Court held that the Managing Director was incompetent to appoint the sole arbitrator because he would be deemed to have an interest in the outcome of the dispute. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid. The relevant observations read thus:—*

"20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72], all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator" The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision

thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72].

*** *** ***

123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:-

….ii. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid."

58. The dispute resolution clause (i.e. Clause 76 of the GCC) in the present case, is in the nature of a unilateral appointment stipulation, whereby the power to appoint the arbitrator has been vested with the CMD of the respondent no.1. In view of ***Bhadra International*** (supra), the said appointment procedure cannot be given effect and it is incumbent on this Court to appoint an independent sole arbitrator.

CONCLUSION

59. For the aforesaid reasons, this Court is inclined to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

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60. Accordingly, Ms. Justice (Retd.) Rekha Palli, former Judge, Delhi High Court (Mob:+ 91 9810012120) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

61. It is made clear that the aforesaid observations have been made only for the purpose of ascertaining, *prima facie*, whether there exists an arbitration agreement, and will not be construed as foreclosing any objection/s relating to jurisdiction/arbitrability. The same are kept open; and shall necessarily be considered by the learned Sole Arbitrator on their own merits.

62. The learned Sole Arbitrator may proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

63. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

64. Parties shall share the arbitrator's fee and arbitral costs, equally.

65. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

66. The petition stands disposed of in the above terms.

SACHIN DATTA, J

AUGUST 31, 2026/*at/ka*

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