2026:AHC:216036

HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 202 of 2026

Shree Laxmi Iron & Steel Works Pvt. Ltd.

.....Applicant(s)

Versus

Union Of India And Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Manjur Mohammad Ansari, Mohd Haleem
Counsel for Opposite Party(s)	:	A.S.G.I., Gaurav Bishan

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Manzur Ahmed, learned counsel for the applicant as well as Sri Gaurav Bishan, learned counsel for the respondents.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the sole Arbitrator. As per the applicant, it happens to be a company incorporated under the provisions of the Companies Act and is engaged in the business of manufacturing and supply of railway materials and allied products. Tenders came to be floated by the respondents for the supply of 90R rail joint fish plates, clamps, bolts and nuts and the applicant participated in the tender process and was awarded a contract by the respondents and a purchase order was initially issued on 06.08.2004/13.08.2004 for supply of 11,696 sets of 90R rail joint fish plates, clamps, bolts and nuts at the rate of Rs. 1,740/- per set, total value of the contract being Rs. 2,03,51,040/-. The applicant executed the works contract and the period of delivery was extended from time to time and lastly 27.09.2006. During the extended period, the quantity to be supplied was also reduced by approximately 30% and the balance quantity came to 8,188 sets. The applicant raised the claim for price variation amounting to Rs. 18,13,666/- in respect of supplies made during the original delivery period and further amount of Rs. 21,04,619/- towards price variation in respect of supplies made during the extended delivery period. Since the respondent failed to make payment of the actual amount due and an amount of approximately Rs. 14,24,712/- was deducted from the bills of the applicant, thus dispute and differences took place. Thereafter, the arbitration proceedings were invoked.

3. Sri B.K. Jairaj, the then FA & CAO, North Eastern Railway, Gorakhpur was appointed as the Arbitrator who pronounced the award on

24.12.2015 whereby the claims of the applicant were disallowed.

4. Being aggrieved against the same, the applicant preferred proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 which was registered as Arbitration Case No. 63 of 2019 and by virtue of the judgment and order dated 04.07.2026 of the Presiding Officer, Commercial Court, Gorakhpur, the objections under Section 34 of the Act came to be allowed and the award dated 24.12.2015 was set aside. Thereafter, the applicant has filed the present application seeking appointment of the Arbitrator in terms of the agreement.

5. This Court on 12.10.2026 proceeded to pass the following order.-

> *"On the request of Sri Gaurav Bisen, put up this case on 14.10.2026, as fresh."*

6. Sri Gaurav Bisingh, learned counsel for the respondents, has produced before this Court instructions dated 13.10.2026 of Deputy Chief Engineer/TP for General Manager, Engineering, North Eastern Railway, which is quoted herein under.-

"NORTH EASTERN RAILWAY

Office of the General Manager/Engg.
Gorakhpur-273012

No-W/73/969/4B (Part-II)

Dated-13.10.2026

Sri Gaurav Bishan, Advocate,
Senior Panel Counsel,
Government of India,
High Court, Allahabad.

Sub: Specific Instructios required in Arbitration Application No. 202/2026 (Shree Laxmi Iron and Steel and Steel works Pvt. Ltd vs Union of India and others.

Ref: Your letter No. Union/2026 dated 12.10.2026 (copy enclosed)

1. P.O. No. NE/PW/3T/159/2004/113 dated 06.08.24 was issued to the petitioner for supply of Joggled Fish Plate. In para XXII of Annexure of aforesaid PO it is specifically mentioned that "IRS Conditions of Contract" corrected upto date and "Instruction to tenderer" shall be applicable. (Copy enclosed)

2. Para 2902 of IRS Conditions of Contract specifically mentioned that in case of

appointment of Arbitrator request shall be made to the General Manager for appointment of Arbitrator. Para 2902 of IRS conditions is reproduced as below-

"Matters Finally Determined by the Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the General Manager (for the purpose of para 2900 the term General Manager shall imply Additional General Managers of Zonal Railways, General Managers for Production Units, Additional Member (Railway Stores), Member of the Railway Board, Head of the Organisation in case of contracts entered into by other organizations under the Ministry of Railways) and the General manager shall, within 120 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in any Clause of the Special or General Conditions of the Contract shall be deemed as 'excepted matters' matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that "excepted matters" shall stand specifically excluded from the purview of the Arbitration Clause." (Copy enclosed)

3. The one of main ingredients of section 11 (6) of Arbitration and Conciliation Act-1996 is a party fails to act as required under the agreed appointment procedure. Section 11 (6) of Arbitration and Conciliation Act-1996 is reproduced as below-

"Where, under an appointment procedure agreed upon by the parties,— (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request 1 [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment"

4. Petitioner after the award of commercial court dated 04.07.2026 never approached to the office of Respondents to appoint the arbitrator.

5. Petitioner after the award of commercial court dated 04.07.2026 not approached to the office of Respondents to appoint the arbitrator and filed writ petition before Hon'ble High court of Allahabad for Appiontment of Arbitator under section of 11(6) of Arbitration and Conciliation Act, 1996 without exhausting the remedy provided as agreed between the parties in terms of contract.

In view of the above, it is prayed that Writ of petitioner may be dismissed and petitioner may directed to approach this office for claim through Arbitration.

DA- as above

(Jitendra Kumar Srivastava)
Dy. Chief Engineer/TP
For Gereral manager/Engg.

Copy to Dy. GM/Law, N E Railway Gorakhpur for kind information please."

7. According to Sri Gaurav Bishan, learned counsel for the respondents, there happens to be an arbitration clause and the dispute itself is arbitrable, that is why the arbitrator came to be appointed and post allowing of the objections under Section 34, again arbitrator is being prayed to be appointed. He submits that the applicant was to approach the respondents for appointment of arbitrator and the present application for appointment of the arbitrator at the first instance without approaching the respondents is not maintainable.

8. I have heard the submissions made across the bar and perused the record.

9. Apparently, there happens to be an arbitration clause which is quoted in the instructions dated 13.10.2026 extracted hereinabove. Earlier, an arbitrator came to be appointed by the respondent department who happened to be the then FA & CAO, North Eastern Railway, Gorakhpur, award was pronounced 24.12.2015, which was subject matter of challenge at the instance of the applicant and on 04.07.2026, the award came to be set aside by the Commercial Court. Now, the applicant seeks appointment of the arbitrator. Section 12(5) of the Arbitration and Conciliation Act reads as under:-

> *" Notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:*
>
> *Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing."*

10. There happens to be a Schedule appended thereto, Seventh Schedule talks about the arbitrator's relationship with the parties or their counsels, meaning thereby an interested person is not to be appointed as an arbitrator whether he is related directly or indirectly with any of the parties. The issue regarding the impartiality and the nomination of the arbitrator being independent came up for consideration before the Hon'ble

Apex Court in **TRF Limited Vs. Energo Engineering Projects Limited, 2017 (8) SCC 377** which has been followed subsequently.

11. On a pointed query being raised to Sri Gaurav Bishan, learned counsel for the respondents as to whether a competent authority as per the agreement of the respondent department can appoint or nominate an arbitrator in view of the law existing on land and Section 12(5) of the Arbitration and Conciliation Act, 1996, his answer is that an independent arbitrator is to be appointed as the department cannot appoint an arbitrator. On being further whether the dispute is arbitrable or not and subsisting, his answer is "YES".

12. In view of the said factual and legal position, the facts and circumstances of the present case warrant appointment of an arbitrator.

13. Since as per the counsel for the rival parties, there happens to be a dispute and difference between the parties and the dispute itself is arbitrable, thus, this Court appoints **Hon'ble Mr. Justice Shishir Kumar, Retd. Judge** of this Court as the sole Arbitrator, **Address- Flat No. B/210, 10th Floor, Sunshine Height, 21/1 (Colvin Road), Dr. Ram Manohar Lohiya Marg, Prayagraj, Mob No. 9415235116.**

14. Let the consent of **Hon'ble Mr. Justice Shishir Kumar** be obtained by the office in terms of the provisions contained in Section 11(8) read with the Section 12(1) of the Act by sending a letter to him.

15. The application stands **disposed of**.

16. In case, the proposed Arbitrator does not give his consent or make disclosure in terms of sub-section (1) of Section 12 of the Act, the application will be listed before this Court for limited purpose for proposing the name of the Arbitrator. The Arbitrator shall be entitled to fee and expenses as per IVth Schedule of the Act.

17. Instructions filed today are taken on record and marked as Appendix-A.

(Vikas Budhwar,J.)

October 14, 2026
Rajesh