



2026:AHC-LKO:11687

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CIVIL MISC. ARBITRATION APPLICATION No. - 19 of 2025

[A.F.R.]

M/S Progressive Construction Company Thru.
Partner/ Authorized Signatory Badelal

.....Applicant(s)

Versus

Engineer-In-Chief And H.O.D., Pwd And Others

.....Opposite
Party(s)

Counsel for Applicant(s)

: Vipul Rai

Counsel for Opposite Party(s)

: C.S.C.

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Abhishek Dwivedi, Advocate holding brief of Shri Vipul Rai, the learned counsel for the applicant and Shri S.K. Khare, the learned Standing Counsel for the State.

2. By means of the instant application filed under Section 11(6) of the Arbitration and Conciliation Act, the applicant is seeking appointment of an arbitrator for adjudication of the disputes between the parties arising out of a contract dated 06.11.2015.

3. Clause 25.1.3 of the agreement contains an arbitration clause. The applicant had requested the opposite parties for appointment of arbitrator as per the aforesaid arbitration clause.

4. On 06.12.2024, the Executive Engineer, Construction Division-II, Public Works Department wrote a letter to the Superintending Engineer, Hamirpur Circle, Public Works Department, Hamirpur recommended appointment of an arbitrator as per the Clause 25.1.3 but when arbitrator was not appointed in spite of this recommendation, the applicant has filed this application.

5. The opposite parties have filed objections against the application which principally contains pleas of the opposite parties disputing the correctness of the claims of the applicant. However, while deciding an application under

Section 11(6) of the Arbitration and Conciliation Act, this Court is not required to examine correctness of the claims of the applicant and that has to be done by the arbitrator.

6. The State has not disputed the existence of arbitration agreement and it has not disputed that through the aforesaid letter dated 06.12.2024, the Executive Engineer had himself requested the Superintending Engineer to appoint an arbitrator.

7. As arbitrator has not been appointed by the opposite parties, occasion has arose for this Court to appoint an arbitrator.

8. The learned counsel for the applicant has stated that although the arbitration clause contains a provision for arbitration by a panel of three arbitrators, the opposite party has not appointed the arbitrators in terms of the aforesaid clause. Now, that the Court has to appoint the arbitrator, the applicant requests that to reduce the cost of arbitration, a single arbitrator be appointed in place of a Tribunal consisting of three arbitrators.

9. In **Union of India v. Singh Builders Syndicate**: (2009) 4 SCC 523, the appellant had challenged an order of the Delhi High Court appointing a retired Judge of the High Court as sole arbitrator to decide the disputes arising in respect of a construction contract between the Northern Railways and the respondent, whereas arbitration clause in the contract between the parties required two serving gazetted railway officers of equal status being appointed as arbitrators, one by the contractor from a panel made available by the General Manager of the Northern Railways and the other by the Northern Railways, and the two arbitrators so appointed, in turn appointing an umpire. The High Court was of the view that the matter was pending since 1999 and that the cumbersome process of constituting an Arbitral Tribunal in terms of the arbitration agreement and the delays on the part of the Railways in complying with the provisions of the arbitration agreement, led to the arbitration becoming virtually a non-starter and no useful purpose would be served by reconstituting a three-Member Arbitral Tribunal. Therefore, the High Court allowed the petition and appointed a retired Judge of the Delhi High Court as the arbitrator. The said order was challenged by filing an appeal before the Hon'ble Supreme Court The question that arises

for consideration by the Hon'ble Supreme Court was whether the appointment of a retired Judge of the High Court as sole arbitrator should be set aside and an Arbitral Tribunal should again be constituted in the manner provided in the arbitration agreement. Upholding the order of the High Court and dismissing the appeal, the Hon'ble Supreme Court held that:-

"13. The position after the new Act came into force, is different, as explained by this Court in Northern Railway Admn., Ministry of Railway v. Patel Engg. Co. Ltd. [(2008) 10 SCC 240] This Court held that the appointment of arbitrator(s) named in the arbitration agreement is not mandatory or a must, but the emphasis should be on the terms of the arbitration agreement being adhered to and/or given effect, as closely as possible.

14. It was further held in Northern Railway case [(2008) 10 SCC 240] that the Chief Justice or his designate should first ensure that the remedies provided under the arbitration agreement are exhausted, but at the same time also ensure that the twin requirements of sub-section (8) of Section 11 of the Act are kept in view. This would mean that invariably the court should first appoint the arbitrators in the manner provided for in the arbitration agreement. But where the independence and impartiality of the arbitrator(s) appointed/nominated in terms of the arbitration agreement is in doubt, or where the Arbitral Tribunal appointed in the manner provided in the arbitration agreement has not functioned and it becomes necessary to make fresh appointment, the Chief Justice or his designate is not powerless to make appropriate alternative arrangements to give effect to the provision for arbitration."

10. The aforesaid judgment has been followed by the Delhi High Court in the case of **24 Secure Services Pvt. Ltd. v. Competent Automobile Ltd.;** 2024 SCC OnLine Delhi 4358, as per the Arbitration Clause, there had to be a panel of three Arbitrators but the parties could not appoint one arbitrator each and, therefore, an application was filed under Section 11(6) of the Act. The Delhi High Court held that: -

"22. In Union of India (UOI) v. Singh Builders Syndicate, (2009) 4 SCC 523 the High Court rejected the contention on behalf of the Government that the Court was not vested with any powers to appoint a Sole Arbitrator in distinction to the Arbitration Agreement which provided for the Tribunal of three members. The Apex Court upheld the order of this Court appointing a Sole Arbitrator by observing that the appointment of the Sole Arbitrator was valid.

23. In view of the submissions made as well as Clause 7 of the Services Agreement dated 16.08.2021 which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed. Mr. Sidharth Sharma Adv. Mobile No. 7400111111, is hereby appointed as the Arbitrator to adjudicate the disputes between the parties."

11. This decision has been followed by Delhi High Court in the case of **Jhajharia Nirman Ltd. v. South Western Railways through Dy. Chief Engineer/IV Construction** reported in 2024 SCC OnLine Del 7133 wherein also, the arbitration clause contained a stipulation of appointment of an Arbitral Tribunal consisting of three arbitrators but the parties had failed to constitute the Tribunal by consent.

12. I find myself in agreement with the aforesaid decision taken by the Delhi High court in the aforesaid cases and I am also of the view that although the arbitration agreement contained provision for constituting a panel of three arbitrators – one arbitrator to be appointed by each of the parties and the third arbitrator or the umpire being appointed by the two arbitrators, the parties fail to appoint their arbitrators, an application under Section 11(6) of the Act is filed and a party requests that it is not willing to bear the high cost of arbitration to be conducted by a panel of three arbitrators and in order to reduce the costs, it requests appointment of a sole arbitrator, this Court can accede to the request.

13. Accordingly, I propose the name of **Hon'ble Mr. Justice V. K. Mathur (Retd.)**, a former Judge of this Court, resident of Flat No.- 203, Samiah Melrose Square, Vrindawan Colony, Sector 6C, Near C.N.G. Pump, Lucknow (U.P.) / 304, Radium Apartments, New Hyderabad, Lucknow, U.P., Mobile Nos. 8004928876, 9717779924 to act as an arbitrator for adjudication of the disputes between the parties.

14. Office is directed to communicate this order to Hon'ble Mr. Justice V. K. Mathur for obtaining his consent.

15. List after receipt of service.

February 11, 2026
-Amit K-

(Subhash Vidyarthi,J.)