

GAHC040007452025

2026:GAU-AP:553



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./1/2025

M/s Yumiko Global Infra Tech Private Limited
represented by its Managing Director, Lishi Yapu, A Sector, Legi Complex, PO and
PS Naharlagun, Papum Pare District, Arunachal Pradesh.

VERSUS

M/s PRL - Gepong (JV)
Mr Nabam Tagi authorized representative Son of Shri Nabam Saha, resident of B
Sector, Naharlagun, Arunachal Pradesh.

Advocate for the Petitioner : 1 K K Mahanta, Sr. Advocate, K M Mahanta,D Dey

Advocate for the Respondent : Jungam Jini, RISSO Aking,Bamang Tatung,Migo Laye,Gyamar
Jeevan,Taying Nega,Tao Tarin,Binter Picha

Date on which Judgment was reserved : N/A

Date of pronouncement of Judgment : 03.06.2026

Whether the pronouncement is
of the operative part of the Judgment ? : N/A

Whether the full Judgment has been
pronounced ? : Yes

:::BEFORE:::

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER (Oral)

03.06.2026

The instant application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

2. I have heard Shri K. K. Mahanta, learned Senior Counsel assisted by Shri K. M. Mahanta, learned counsel for the petitioner. I have also heard Shri J. Jini, learned counsel for the respondent.

3. Normally, the process of consideration of an application under Section 11 (6) of the Act of 1996 is more of a mechanical one, wherein the Court is required to be satisfied on certain aspects regarding the availability of an arbitration clause in the agreement and the existence of a dispute which, even after being approached by one of the parties for resolution has not been acted upon. However, in the instant case, there is stiff opposition by the respondent denying the availability of any such clause. Under such circumstances, the petition was required to be heard elaborately.

4. Shri Mahanta, learned Senior Counsel for the petitioner has submitted that there is a clause for resolution of disputes by arbitration. He has drawn the attention of this Court to the agreement executed between the parties, wherein the said clause finds place at Serial No. 5. He submits that an arbitrator can be appointed under the aforesaid agreed clause. He has also referred to the definition of "sub-contract" as contained in Clause 1(f), as per which the main contract dated 31.03.2017 was also to be treated as part and parcel of the agreement. He has submitted that it is not in dispute that in the main contract

there is an arbitration clause in Clause No. 29. He has submitted that once the main contract was made part of the sub-contract, there should not be any confusion with regard to the availability of an arbitration clause for resolution of disputes. He has further submitted that after filing of the present petition, the respondent had indeed filed a money suit, in which the petitioner has apprised the Court regarding the pendency of this case, and accordingly, there is an order passed by the learned Civil Court on 22.10.2025 awaiting the outcome of the present case.

5. The learned Senior Counsel for the petitioner has submitted that the issue regarding an arbitration clause in any other connected documents, which are to be read as part and parcel of the agreement, would govern has been settled by the Hon'ble Supreme Court in the case of ***Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. & Anr.***, reported in ***2026 SCC OnLine 854***. He has submitted that the entire clause regarding resolution of disputes by arbitration as laid down in Clause 29, would be applicable.

6. *Per contra*, Shri J. Jini, learned counsel for the respondent has submitted that the present application filed under Section 11 (6) of the Act is misconceived. He has submitted that there is no arbitration clause at all in the agreement between the parties. By drawing the attention of this Court to Clause No. 5, which is with regard to resolution of dispute and termination of contract, the learned counsel for the respondent has submitted that the said clause clearly stipulates that any disputes arising out of the contract would be resolved mutually upon discussion and, if such resolution is not possible mutually, further meetings would be held by involving two persons who have been named. The learned counsel has submitted that, in the absence of any mechanism for resolution of disputes through arbitration, the present application cannot be

entertained. He has highlighted that unless there is a clear stipulation in the agreement whereby the parties have agreed to have their disputes resolved through arbitration, there cannot be any forced arbitration, as the entire scheme is based on the foundation of consent between the parties.

7. Learned counsel for the respondent has also submitted that the stand of the petitioner has changed and the submissions presently made are not supported by the pleadings. By drawing the attention of this Court to the averments made in paragraphs 10 and 12 of the petition, the learned counsel for the respondent has submitted that the background and objective of filing the present petition was to invoke Clause 5 of the sub-agreement. He has submitted that it is only upon the filing of the objection by his client that there has been a change in the stand, and recourse to Clause 29 of the principal agreement has been taken. He has submitted that the present agreement is between his client and the petitioner, whereas the principal agreement is between his client and the Department. He has submitted that the arbitration clause existing in the principal agreement cannot be made applicable to the present agreement where there is a specific clause for resolution of disputes which does not involve any arbitration.

8. As regards the case of ***Hirani Developers (Supra)***, the learned counsel for the respondent has submitted that the facts and circumstances of that case are wholly different and would not be applicable in the instant case, more so when there is a specific clause for resolution of disputes in the sub-contract.

9. Learned counsel for the respondent has cited the case of the Hon'ble Supreme Court in the case of ***M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.***, reported in ***(2009) 7 SCC 696***, and the observations made in paragraph 24 have been pressed into service, which read

as follows:

“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.”

10. The learned counsel for the respondent has also submitted that even from the definition of sub-contract appearing in Clause 1(f), it cannot be argued that all the aspects of the main contract would be part and parcel of the sub-agreement. He has submitted that there is use of the expression “wherever not mentioned”. He has submitted that Clause 29 of the original agreement cannot be incorporated in the present case. He has further submitted that the three conditions laid down in paragraph 24 in the case of ***M.R. Engineers (Supra)*** have not been fulfilled.

11. The learned counsel for the respondent has also relied upon the case of ***NBCC (India) Limited v. Zillion Infraprojects Pvt. Ltd., reported in (2024) 7 SCC 174,*** and has submitted that the Hon’ble Supreme Court has made it clear that, in the absence of any dispute resolution mechanism, the avenue for arbitration can be explored if the principal contract contains such a

clause. He has submitted that his client has filed Money Suit No. 57 of 2025 in the Court of the learned Civil Judge (Senior Division), Yupia, in which an order has been passed on 22.10.2025. He has also relied upon the case of ***M/s. Elite Engineering and Construction (Hyd.) Private Limited, represented by its Managing Director v. M/s. Techtrans Construction India Private Limited, represented by its Managing Director***, reported in **(2018) 4 SCC 281**, which has reiterated the principles laid down in *M.R. Engineers (Supra)*. He has further relied upon the case of ***Mahanadi Coalfields Ltd. & Anr. v. IVRCL AMR Joint Venture***, reported in **(2022) 20 SCC 636** and the following observations have been pressed into service:

"8. In Jagdish Chander v. Ramesh Chander, a two-Judge Bench of this Court, while relying upon the earlier decisions in K.K. Modi v. K.N. Modi, Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd., Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. and State of Orissa v. Damodar Das enumerated the principles governing what constitutes an arbitration agreement. R.V. Raveendran, J., speaking on behalf of the Bench, held that the words used in an arbitration agreement should disclose a determination and obligation on behalf of parties to refer disputes to arbitration. This Court held:

(Jagdish Chander case, SCC pp. 724-25, para 8)

"8 ... (i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is an arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to

go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) Even if the words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are:

(a) The agreement should be in writing.

(b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal.

(c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it.

(d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an

authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.

(iv) But mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as 'parties can, if they so desire, refer their disputes to arbitration' or 'in the event of any dispute, the parties may also agree to refer the same to arbitration' or 'if any disputes arise between the parties, they should consider settlement by arbitration' in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that 'if the parties so decide, the disputes shall be referred to arbitration' or 'any disputes between parties, if they so agree, shall be referred to arbitration' is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future."

(emphasis supplied)

9. In the present case, Clause 15 of the contract agreement is titled "Settlement of Disputes/Arbitration". However, the substantive part of the provision makes it abundantly clear that there is no arbitration agreement

between the parties agreeing to refer either present or future disputes to arbitration."

12. The learned counsel for the respondent has accordingly argued that Clause 29 of the principal contract cannot be treated to be a part of the sub-agreement and, therefore, the instant petition is liable to be dismissed.

13. Shri Mahanta, learned Senior Counsel for the petitioner, in his rejoinder, has submitted that Clause 5 of the sub-contract does not bar arbitration as such. He has submitted that while the aspect of mediation is clearly made a part of the said clause, that would mean that arbitration is also possible. He has submitted that Clause 5(2), in fact, indicates arbitration. He has further submitted that Clause 5 has to be read with Clause 29 of the main agreement.

14. The rival submissions advanced by the learned counsel for the parties have been duly considered, and the materials placed before this Court have been carefully examined.

15. As indicated above, there is hardly any requirement of application of judicial mind to an application made under Section 11(6) of the Arbitration Act for appointment of an arbitrator. However, in the instant case, the matter is slightly different, as there is stiff resistance by the respondent, who has contended that in the absence of any clause for arbitration, the present application would not even be maintainable.

16. To answer the issue which has arisen in the instant application, it would be necessary to carefully examine the relevant provisions involved, which are as follows:

“ **Provision of the Sub-contract.**

...**1(f)** Subcontracts:- "Subcontract" means the Agreement placed on the

Subcontractor by the Contractor for the execution of the balance work(s), in accordance with the specifications, drawings, term and conditions, workmanship as per main contract requirement for satisfactory completion of works. The main contract bearing No. Agmt No. PKD/NEC/PSI/Agmt-03/2016- 17, dated 31-03-2017 shall be part and parcel of this AGREEMENT and wherever not mentioned, subsequently, all the provisions in contractor 's scope, responsibility, risks and liabilities shall be binding on sub-contractor.

5. Dispute Resolution and Termination of Contract:

(a) That any disputes arising out of the contract shall be resolved mutually upon discussions.

(b) However in case the disputes cannot be resolved mutually, further meetings under aegis of Shri Tarin Nabam and Shri Sanjeev Tana.

(c) That the subcontractor is strictly instructed under this agreement that there should not be violation against any clauses of this agreement, if it is found, a show cause notice will be served first and secondly a termination letter will be served to the subcontractor.

Provision of the Principal Contract.

29. *In the case of any disputes arising out of the meaning of any provision under this agreement or specification etc., the case may be referred to a person of the rank of Superintending Engineer, the appointment of which is to be made by the Secretary (PWD), Govt. of Arunachal Pradesh, for arbitration under relevant law."*

17. In the definition of 'sub-contract', it is not in dispute that there is a

stipulation that the main contract shall be part and parcel of the said sub-agreement. This Court, however, finds force in the contention advanced by the learned counsel for the respondent, who has submitted that there is use of the expression "wherever not mentioned". In the said sub-agreement, there is a specific clause for dispute resolution, being Clause 5, which has been extracted above. The said dispute resolution mechanism does not stipulate any such resolution by arbitration.

18. Though the learned Senior Counsel for the petitioner has emphasised that the requirement of resolution of disputes through arbitration can be read into Clause 5 of the sub-agreement, this Court is unable to accede to the said submission. This Court is of the opinion that arbitration is essentially a mode of resolution of disputes which has to be specifically agreed to by the parties. The absence of any such stipulation in the agreement cannot lead any party to demand resolution of such disputes by arbitration. As regards the definition of 'sub-contract' appearing in Clause 1(f), this Court is of the opinion that though the stipulations in the principal contract are to be treated as part and parcel of the sub-agreement, in view of the specific clause for resolution of disputes existing in the sub-contract itself, Clause 29 of the principal contract cannot be applied.

19. This Court also finds force in the contention advanced by the learned counsel for the respondent that there has been a change in the stand taken by the petitioner. A bare reading of the petition would show that the petitioner initially approached this Court seeking appointment of an arbitrator on the basis of Clause 5 of the sub-contract, proceeding on the understanding that the said clause stipulated resolution of disputes through arbitration. However, when an objection was raised in the affidavit filed by the respondent, the petitioner

changed its stand and sought to rely upon Clause 29 of the original agreement.

20. As already mentioned above, the arbitration clause contained in Clause 29 of the original agreement cannot have any application to the sub-contract, inasmuch as the sub-contract itself contains a specific clause for resolution of disputes, namely Clause 5, which has been referred to hereinabove.

21. So far as the case of ***Hirani Developers (Supra)*** is concerned, this Court finds force in the argument advanced by the learned counsel for the respondent that the facts of that case are wholly different. In that case, while the original agreement had an arbitration clause, the subsequent agreement with the flat owners did not have such a clause. On the other hand, in the instant case, the sub-agreement itself has a clause for resolution of disputes.

22. This Court also finds force in the argument of the learned counsel for the respondent, who has relied upon the case of ***M.R. Engineers (Supra)***, where three conditions have been laid down, and those conditions have not been fulfilled in the present application. The principles laid down in ***M.R. Engineers (Supra)*** have subsequently been reiterated and affirmed in the cases of ***Elite Engineering (Supra)*** and ***Mahanadi (Supra)*** and this Court is of the opinion that, in the absence of any clause in the agreement for resolution of disputes by arbitration, and on the contrary, where the clause available for such resolution is through other means, the petitioner cannot fall back on Clause 29 of the original contract and demand arbitration.

23. In view of the aforesaid discussions, this Court is of the opinion that the instant application is not maintainable.

24. The dismissal of the present application, however, shall not cause any prejudice to the petitioner in contesting the money suit or in seeking recourse to

law in any manner otherwise permissible.

25. No order as to cost(s).

JUDGE

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Comparing Assistant