



2026:DHC:9228



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 16.10.2026

CNR No.DLHC010335362026

+ **ARB.P. 1253/2026**M/S GREENTREE BUILDING
ENERGY PRIVATE LIMITED

.....Petitioner

Through: Mr. Bipin Kumar, Advocate along
with Mr. Suresh Chandra Sharma,
Advocate.

versus

BUREAU OF ENERGY EFFICIENCY

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("*the A&C Act*") seeks appointment of a sole arbitrator for adjudication of the disputes which have arisen between the parties out of and in relation to the Letter of Award dated 15.02.2024 bearing Work Order No. 10/01/RC/BEE/2022/7063, and the Memorandum of Agreement / Service Agreement dated 29.02.2024 executed between the parties.

2. The respondent/Bureau of Energy Efficiency issued a Request for Proposal dated 06.12.2023 for hiring of an agency to conduct Refresher Courses for Energy Auditors and Energy Managers. The bid submitted by the petitioner came to be accepted, and the aforesaid Letter of Award dated 15.02.2024 was issued in favour of the petitioner for imparting refresher



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training to approximately 2,000 candidates through workshops across the country. The terms and conditions governing the engagement were thereafter reduced into writing in the form of the Memorandum of Agreement / Service Agreement dated 29.02.2024.

3. It is the case of the petitioner that its performance was impeded on account of the failure of the respondent to hand over a functional portal, the candidate database, registration / payment verification and certification related approval/instructions, as a result whereof the petitioner was constrained to deploy its own manpower and technical resources for setting up an alternate portal. The contract period came to be extended by the respondent, first upto 14.05.2025 vide letter dated 02.04.2025, and thereafter upto 01.10.2025 vide letter dated 11.07.2025.

4. It is stated that the petitioner trained 636 candidates, as against the milestone requirement of 600 candidates, and thereby achieved Milestone-I; it accordingly raised Tax Invoice No. 25262075/01/081 dated 06.06.2025 for a sum of Rs. 46,11,204/- (inclusive of IGST), being 30% of the total contract value of Rs. 1,53,70,680/-. According to the petitioner, only a sum of Rs. 15,53,350/- came to be released on 15.01.2026.

5. By e-mail dated 28.01.2026, the respondent forwarded the particulars of the said payment, whereunder, as against the invoiced sum of Rs. 46,11,204/-, an amount of Rs. 44,19,071/- was reckoned as payable, from the said amount, deductions of Rs. 11,52,801/- (in respect of six workshops, on account of an alleged shortfall in the stipulated minimum of 25 candidates) and Rs. 15,37,068/- (towards an alleged "10% maximum penalty" on the total contract value) were effected, leaving a sum of Rs. 17,29,202/- as having been passed for payment, and the sum of Rs.



15,53,350/- was released therefrom after statutory deductions towards TDS and GST-TDS. The petitioner disputes the aforesaid deductions, as being unilateral, arbitrary and contrary to the terms of the agreement. A further sum of Rs. 5,14,918/-, claimed under Pro-Forma Invoice No. PI/26-27/00073 dated 21.05.2026 in respect of the balance 67 candidates under the same Work Order, is also stated to be outstanding.

6. The respondent, in its reply dated 23.04.2026 to the notice invoking arbitration, has controverted the aforesaid claims. It is the stand of the respondent that the petitioner persistently failed to execute the work in accordance with the agreed milestones and timelines, despite communications dated 01.05.2024, 10.10.2024 and 07.02.2025, and that the deductions effected from the invoice were justified in terms of the contractual framework governing the parties.

7. The arbitration agreement between the parties is contained in Clause 11.4 of the Memorandum of Agreement / Service Agreement dated 29.02.2024, which reads as under:

"11.4. Dispute Resolution, Jurisdiction

11.4.1. This Agreement and the engagement of the Consultant hereunder shall be governed by and construed in accordance with the laws of India and subject to Clause 11.4.2 below, the Parties submit to the exclusive jurisdiction of the courts at New Delhi, India in respect of any legal action or proceedings arising out of or in connection with this Agreement.

11.4.2. All disputes, controversies and differences of opinion arising out of or in connection with this Agreement or for the breach or for any alleged wrongful termination hereof which cannot be settled amicably by the Parties hereto shall be resolved by a Sole Arbitrator appointed by



BEE. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and statutory re-enactments or modifications thereof for the time being in force.

11.4.3. The decision of the Sole Arbitrator shall be final and binding on the Parties. The seat, place and venue of arbitration shall be at New Delhi, India. ... The arbitration proceedings shall be conducted in the English language. The Parties hereto submit to the Sole Arbitrator's award and the award shall be final and enforceable in the competent court of law."

8. The existence and validity of the aforesaid arbitration agreement is not in dispute. The seat, place and venue of arbitration having been agreed to be at New Delhi, this Court is possessed of the requisite jurisdiction to entertain the present petition.

9. The petitioner issued a notice dated 01.04.2026 under Sections 11 and 21 of the A&C Act, invoking the aforesaid arbitration agreement, and calling upon the respondent to concur in the appointment of an independent and impartial sole arbitrator within a period of 30 days. Although the respondent has responded to the said notice vide reply dated 23.04.2026, it has not concurred in the appointment of an arbitrator. The pre-conditions for invoking the jurisdiction of this Court under Section 11(6) of the A&C Act are, therefore, satisfied. Pursuant to the order dated 29.07.2026, notice was issued to the respondent. An affidavit of service has been filed. Despite service, none has entered appearance on behalf of the respondent, and no reply to the petition has been filed.

10. In the notice invoking arbitration, as also in the present petition, the petitioner has pointed out that the mechanism contemplated in Clause 11.4.2



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i.e., resolution of disputes by "a Sole Arbitrator appointed by BEE" is incapable of being acted upon. The said contention is well founded. It is well settled that a party which is itself interested in the outcome of the dispute cannot be permitted to unilaterally appoint the sole arbitrator, and that a person who is himself ineligible to act as an arbitrator cannot nominate another person as an arbitrator (see **TRF Ltd. v. Energo Engineering Projects Ltd.**, (2017) 8 SCC 377; **Perkins Eastman Architects DPC v. HSCC (India) Ltd.**, (2020) 20 SCC 760). The said position has since been affirmed by the Constitution Bench of the Supreme Court in **Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)**, 2024 SCC OnLine SC 3219, wherein it has been held that an appointment process which permits one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator, and is contrary to the principle of equal treatment of parties enshrined in Section 18 of the A&C Act.

11. The unenforceability of the appointment mechanism, however, does not impinge upon the existence and validity of the arbitration agreement itself. The unequivocal intention of the parties to have their disputes resolved by arbitration remains. In these circumstances, the appointment procedure agreed upon between the parties must be treated as having failed, thereby enabling this Court to exercise its jurisdiction under Section 11(6) of the A&C Act.

12. Insofar as the objections raised by the respondent on merits are concerned, including as regards the alleged non-performance and delay attributable to the petitioner, the justifiability of the deductions effected from the invoice, and the entitlement of the petitioner to the amounts



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claimed; it is well settled that the scope of enquiry at the stage of Section 11 of the A&C Act is extremely narrow, and is confined to an examination as to the existence of an arbitration agreement (see ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, (2024) 6 SCC 1; ***SBI General Insurance Co. Ltd. v. Krish Spinning***, (2024) 11 SCC 41; ***NTPC Ltd. v. SPML Infra Ltd.***, (2023) 9 SCC 385). Such issues, being matters falling within the domain of the arbitral tribunal, are not liable to be gone into at this stage.

13. In view of the foregoing, the disputes between the parties arising out of the Letter of Award dated 15.02.2024 bearing Work Order No. 10/01/RC/BEE/2022/7063 and the Memorandum of Agreement / Service Agreement dated 29.02.2024, are liable to be referred to arbitration, and a Sole Arbitrator is required to be appointed by this Court.

14. Accordingly, Ms. Manini Brar, Advocate, Advocate (Mobile No. +91 9205591340) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the Sole Arbitrator in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to the parties furnishing disclosure as required under Section 12 of the A&C Act.

17. Let arbitration take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

18. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole



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Arbitrator on merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 16, 2026/nb