

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****Arbitration Application No. 147 of 2022**

Between:

**M/s Bhrundha Infra Pvt. Ltd.**

**... Petitioner**

**And**

**Union of India and others**

**... Respondents**

JUDGMENT PRONOUNCED ON: 04.07.2023

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

- 1. Whether Reporters of Local newspapers : yes  
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : yes**

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**SUREPALLI NANDA, J**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

**Arbitration Application No. 147 of 2022**

% 04.07.2023

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< Gist:

> Head Note:

! Counsel for the Petitioner : M/s K.Dhananjaya Naidu

^ Counsel for the Respondent No.3: Ms Shireen Sethna Baria

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

**Arbitration Application No. 147 of 2022**

**ORDER:**

The Petitioner vide Application dated 08.01.2021 addressed to the Executive Director Engineer Projects India Limited, SRO, Chennai requested for payment of pending payments and compensation for additional cost suffered in the project of construction of Phase-I works comprising Research Lab with R & D Office, Hostel Block including Guest House, Security Lodge, Animal Farms, Animal House including associated works for National Institute of Animal Biotechnology, Hyderabad. The Respondent herein replied to the said letter dt. 08.01.2021 vide POC/PMD/726/02/438, dt. 27.01.2021 stating that the subject work was completed and the amount towards final bill, except the amount of GST (towards anti-profiteering) had been cleared by HSCC, EPI and in turn EPI also had released the due payments to M/s. Bhrunda Infra Private Limited i.e., the Petitioner herein and that therefore the Petitioner herein was not entitled for any extra claims other than GST amount payable if any for which submission of anti-profiteering statement is pending till date. Vide letter dated 10.02.2021, the Petitioner herein again

**addressed to the Respondent i.e., General Manager, Engineer Projects (India) Ltd., NIAB site Hyderabad to reconsider their decision communicated vide letter dt.27.01.2021 and for release of additional claims.**

**2. When the Petitioner herein did not receive any response to its letter dated 10.02.2021, the Petitioner vide Ref.No.BIPL/EPIL/ HSCC/NIAB/CLAIM/2021-22/04, dated 25.05.2021, invoked Clause for dispute resolution as provided under the Agreement Clause 57 of the Additional Conditions of the contract r/w EPI GCC Clause No.76 which provides for in the first instance reference for amicable settlement of disputes/claims and accordingly the Petitioner herein referred the claims already brought out on record vide Petitioner's claim letter dated 08.01.2021 for amicable settlements of claims as provided under the contract giving details of the list of the claims required to be settled through amicable settlement.**

**3. The Petitioner herein received reply dated 28.05.2021 in response to Petitioner's letter dated 25.05.2021 invoking Clause for Dispute Resolution under Clause 57 ACC for amicable settlement, requesting the Petitioner to arrange to**

**depute Petitioner's Engineer for preparing and submitting the claims with all details to HSCC (I) Ltd., at the earliest. The Petitioner herein vide detailed reply dt. 30.09.2021 addressed to the Respondent Executive Director, Engineering Projects (India) Ltd., SRO, Chennai and also Hyderabad, referring to Clause 76 of the Memorandum of Agreement explained that the said clause categorically provides for resolution of disputes or differences arising out of contract agreement dt. 20.02.2015 between the parties and to consider Petitioner's claim and further that Clause 76.1 provides that before resorting to Arbitration the parties if they so agree may explore the possibility of conciliation as per the provisions of Part-III of the Arbitration and Conciliation Act, 1996 and when such conciliation has failed the party shall adopt for Arbitration and since no amicable settlement has reached as per Petitioner's request vide letter dated 22.05.2021 having been aggrieved the Petitioner further called upon the Respondent for conciliation as per Clause 57 of ACC and 76 of GCC for settlement of claims and when the Petitioner did not receive any reply to Petitioner's letter dt.30.09.2021, the Petitioner vide letter dt. 08.11.2021 addressed to the Respondent invoked the Arbitration pursuant to Clause 57 of**

**ACC and Clause 76 of GCC for Settlement of Claims put-forth by the Petitioner's Claim letter dated 08.01.2021 and 10.02.2021. In response to Petitioner's letter dated 08.11.2021, the Petitioner received reply from the Respondent Authority requesting the Petitioner herein to agree to conciliate the disputes and in this regard suggested 3 names of which one could be appointed as a Conciliator and the Petitioner herein replied to the said letter dated 23.11.2021 stating that the Petitioner approached the Respondent office with an offer to conciliate the disputes as per the provisions of contract agreement vide Petitioner's letters dated 25.05.2021 and 30.09.2021 and since there was no response from Respondent's end, the Petitioner had invoked the Arbitration as per Clause 57 of ACC r/w Clause 76 of EPI GCC of the Contract Agreement vide letter dated 08.11.2021 and hence the Respondents offer for conciliation of the disputes after the invocation of Arbitration by the Petitioner is not valid and not acceptable.**

**4. PERUSED THE RECORD :**

**i) Para 5, 6, 7 & 8 of the Counter Affidavit filed on behalf of Respondent No.3 read as under :**

**Para 5 :** It is respectfully submitted that the Applicant whilst neglecting the contentions and clarifications of the answering Respondent, addressed letter dated 10.02.2021 & 25.05.2021 to reconsider its decision and consider the claims of the Applicant failing which they reserve the right to resolve the dispute through invocation of dispute resolution clause.

**Para 6 :** It is respectfully submitted that the Applicant has deliberately and utterly failed to explain as to how he is entitled to file, maintain, and seek the reliefs sought in the present application. Since the reliefs sought by the Applicant are wholly not maintainable in Law, the same cannot be granted. It is further submitted that a bare perusal of the application clearly reveals that the Applicant made no proper efforts to resolve the disputes through conciliation before filing the arbitration application, as such the Applicant cannot have any cause of action and this application is premature. Hence, the alleged cause as falsely projected by the Applicant is nothing but non-existent, fictitious cause and appears to have been created only for the purpose of the present untenable case.

**Para 7 :** It is respectfully submitted that the answering Respondents were surprised to receive notices invoking arbitration vide various letters dated 08.11.2021, 02.12.2021, 15.12.2021 & 21.01.2022 despite sincere efforts extended by the answering Respondents to resolve the dispute amicably.

**Para 8 :** It is respectfully submitted that the present application is filed by the Applicant for appointment of Sole Arbitrator. It is relevant to mention that the claims stated in the application negate the sanctity of undertaking given by Applicant. It is further stated that the Applicant is estopped from making any claims, after the execution of the no dues certificate. Moreover, in case of any disputes between the parties, as per the General Conditions of Contract, a mandatory pre-condition to arbitration being a need to settle disputes, if any, amicably (conciliation) had not been fully complied with by the Applicant.

**ii) Contents of the notice dated 25.05.2021 issued by the Petitioner under Clause 57 of ACC r/w Clause 76 of EPI GCC for amicable settlement.**

"We vide our letter dated 8<sup>th</sup> January 2021, requested for payment of additional cost suffered in the project during the extended period beyond scheduled completion date to the extent of Rs.23,16,12,021/- as more detailed in the said letter comprising of 20 pages of brief write-up along with enclosed quantification of claims. In response to the said letter, EPI vide its letter dated 27<sup>th</sup> January 2021 replied that, not entitled for any extra claims other than GST. For which we have replied vide our letter dated 10<sup>th</sup> February 2021 detailing that how we are entitled for the said additional costs/Claims as brought out vide our letter dated 18<sup>th</sup> January 2021 and requested to reconsider



the EPI decision and release of the said amounts, failing which, we have no other option but to invoke the dispute resolution clause provided under the contract for settlement of the said claims.

2. It is further submitted that there is no response to our said letter dated 10<sup>th</sup> February 2021, and now we have no other option, but to invoke clause for dispute resolution as provided under the agreement. Clause 57 of the Additional Conditions of the contract read with EPI GCC clause No 76, which provides for, in the first instance reference for amicable settlement of the disputes/ claims. Accordingly, we here by refer the following disputes/claims as already brought out vide our claim letter dated 8<sup>th</sup> January 2021 for amicable settlement of the claims as provided under the contract. The list of claims that requires to be settled through amicable settlement are as under:

Claim No.	Description of Claim	Amount
1.	Claim for payment of Excess deduction of WCT in RA Bills and interest thereon	1,60,07,346
2.	Claim for payment of Excess deduction of Labour cess in RA Bills and interest thereon	34,22,355
3.	Claim for payment of Withheld amount in RA bills and interest thereon	33,66,867
4.	Claim for Interest on amount withheld towards GST in RA Bills	13,37,157
5.	Claim for payment of excess deduction towards Interest on Mobilization Advance in RA Bills and interest thereon	31,86,778
6.	Claim for Payment of Loss of Over heads and profit due to reduction in contract price from Rs. 55.75 Cr to 44,64 Cr	2,58,13,225
7.	Claim on Accounts of Hire charges of centering, shuttering and Scaffolding due	16,57,577

	to withhold of the work due to delay in decision in various parts of Buildings	
8.	Claim for additional Head Office Over heads incurred during the extended period from 01.08.2016 to 24.02.2018	2,30,11,691
9.	Claim for additional Head Office Over heads incurred during the extended period from 01.08.2016 to 24.02.2018	74,23,877
10.	Claim for Additional Deployment of Plant and machinery than envisaged due to the prolongation of the project	3,25,71,275
11.	Claim for Bank Guarantee commission charges and loss of interest on margin money due to extension of BGs in the extended period	66,49,028
12.	Claim for payment of excess of interest paid on repayment of Mobilization Advance due to delays in the contract period and subsequent prolongation of the Contract	99,09,736
13.	Claim for increased incidence of costs towards labor and other materials over and above which is already paid in the RA bills in the form of Price Escalation during the extended period of contract.	1,93,43,760
14.	Claim for Loss of opportunity of profit due to retention in the extended period	5,30,95,775
15.	Claim for payment of GST on the awarded amounts due to introduction of GST law @ 12% on works contract	2,48,15,574
	Total (Plus Interest)	23,16,12,021

**We hereupon request to kindly settle the issues amicably and grateful to arrange a meeting preferably with a week from the date of receipt of this letter, failing which we are constrained to take up further course of action as provided under the Contract for settlement of the same.**

**iii) Copy of the Petitioner's notice for conciliation dated 30.09.2021:**

We vide our letter dated 8th January 2021, requested for payment of additional cost suffered in the project during the extended period beyond scheduled completion date to the extent of Rs.23,16,12,021/- as more detailed in the said letter comprising of 20 pages of brief write-up along with enclosed quantification of claims. In response to the said letter, EPI vide its letter dated 27th January 2021 replied that, not entitled for any extra claims other than GST. For which we have replied vide our letter dated 10th February 2021 detailing that how we are entitled for the said additional costs/Claims as brought out vide our letter dated 8th January 2021 and requested to reconsider the EPI decision and release of the said amounts, failing which, we have no other option but to invoke the dispute resolution clause provided under the contract for settlement of the said claims.

2. It is further submitted that there is no response to our said letter dated 10<sup>th</sup> February 2021, and having no other option, invoked clause for dispute resolution as provided under the agreement. Clause \$7 of the Additional Conditions of the contract read with EPI GCC clause No 76, which provides for, in the first instance reference for amicable settlement of the disputes claims. Accordingly, we had sought for an amicable settlement vide our letter dated 25.05.2021 for which we received a response dated 28.05.2021 which is not acceptable to us. In this regard, we submit that as per the memorandum of Agreement, Arbitration is to be as per EPI GCC clause 76. The said clause 76 provides that

"Any disputes and differences relating to the meaning of the specifications, Design Drawings and materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract Designs, Drawings, Specifications. Estimates, Instructions, or these conditions, or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the Sole Arbitration of the Chairman and Managing Director (CMD) of Engineering Projects (India) Limited (EPI). The parties shall make efforts to settle disputes, if any, amicably. Only if amicable settlement is not possible, the same shall be referred to the sole arbitration of the Chairman & Managing Director (CMD) of EPI or the person appointed by the CMD, EPI and the decision of the arbitration shall be final and binding on the "Parties" Arbitration will be according to "Conciliation & Arbitration" clause of GCC."

3. The above clause categorically provide for resolution of the disputes or differences arising out of this contract agreement dated 20.02.2015 between the parties, therefore, your contention vide letter dated 28.05.2021 that any claims for the subject work are to be submitted to HSCC limited who are PMC for NIAB project is not in accordance with the contract agreement and therefore bereft of merit. Therefore, once again request you to consider our claim.

4. Further, clause 76.1 provides that before resorting to arbitration, the parties if they so agree may explore the possibility of conciliation as per the provisions of part-III of the Arbitration and Conciliation Act. 1996. When such conciliation has failed, the parties shall adopt for arbitration. Therefore, since no amicable settlement is reached as per our request vide

letter dated 22-05-2021, having aggrieved, we further call upon for conciliation pursuant for clause 57 of ACC and 76 of GCC for the settlement of following claims.

Claim No.	Description of Claim	Amount
1.	Claim for payment of Excess deduction of WCT in RA Bills and interest thereon	1,60,07,346
2	Claim for payment of Excess deduction of Labour cess in RA Bills and interest thereon	34,22,355
3.	Claim for payment of Withheld amount in RA bills and interest thereon	33,66,867
4.	Claim for Interest on amount withheld towards GST in RA Bills	13,37,157
5.	Claim for payment of excess deduction towards Interest on Mobilization Advance in RA Bills and interest thereon	31,86,778
6.	Claim for Payment of Loss of Over heads and profit due to reduction in contract price from Rs. 55.75 Cr to 44,64 Cr	2,58,13,225
7.	Claim on Accounts of Hire charges of centering, shuttering and Scaffolding due to withhold of the work due to delay in decision in various parts of Buildings	16,57,577
8.	Claim for additional Head Office Over heads incurred during the extended period from 01.08.2016 to 24.02.2018	2,30,11,691
9.	Claim for additional Head Office Over heads incurred during the extended period from 01.08.2016 to 24.02.2018	74,23,877
10.	Claim for Additional Deployment of Plant and machinery than envisaged due to the prolongation of the project	3,25,71,275
11.	Claim for Bank Guarantee commission charges and loss of interest on margin money due to extension of BGs in the extended period	66,49,028
12.	Claim for payment of excess of interest paid on repayment of Mobilization Advance due to delays in the contract period and subsequent prolongation of the Contract	99,09,736

13.	Claim for increased incidence of costs towards labor and other materials over and above which is already paid in the RA bills in the form of Price Escalation during the extended period of contract.	1,93,43,760
14.	Claim for Loss of opportunity of profit due to retention in the extended period	5,30,95,775
15.	Claim for payment of GST on the awarded amounts due to introduction of GST law @ 12% on works contract	2,48,15,574
	Total (Plus Interest)	23,16,12,021

**5. We hereupon request to kindly settle the issues through Conciliation and grateful to arrange a meeting preferably with a week from the date of receipt of this letter, failing which we are constrained to take up further course of action as provided under the Contract for settlement of disputes and constrained to refer the matter for Arbitration.**

**5. DISCUSSION AND CONCLUSION :**

**a) Having regard to the pleadings and contentions the following questions arise for consideration :**

- 1. Whether the arbitration application is premature ?**
- 2. Whether a case is made for appointment of Arbitrator to decide the disputes between the parties ?**

**b) Clause 57 of ACC which deals with Arbitration is as under:**

**"The "Parties" shall make efforts to settle disputes, if any, amicably. Only if amicable settlement is not possible, the same shall be referred to the sole**

**arbitration of the Chairman & Managing Director (CMD) of EPI or the person appointed by the CMD, EPI and the decision of the arbitrator shall be final and binding on the "Parties" Arbitration will be according to "Conciliation & Arbitration" clause of GCC.**

**c) As per the Memorandum of Agreement, Arbitration is to be as per EPI GCC clause 76. The said clause 76 provides that:**

**"Any disputes and differences relating to the meaning of the specifications, Design, Drawings and materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, Designs, Drawings, Specifications, Estimates, Instructions, or these conditions, or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the Sole Arbitration of the Chairman and Managing Director (CMD) of Engineering Projects (India) Limited (EPI). The parties shall make efforts to settle disputes, if any, amicably. Only if amicable settlement is not possible, the same shall be referred to the sole arbitration of the Chairman & Managing Director (CMD) of EPI or the person appointed by the CMD, EPI and the decision of the arbitration shall be final and binding on the parties, Arbitration will be according to "Conciliation & Arbitration" clause of GCC."**

**d) This Court opines that though the contract provides for, that the disputes shall be adjudicated by a Sole Arbitration of the Chairman & Managing Director (CMD) but, in view of the Amendment to the Arbitration and Conciliation Act, 1996 (as Amended in 2015) the Chairman & Managing Director is himself ineligible to act as an Arbitrator so also ineligible to appoint an Arbitrator to adjudicate upon the disputes between the parties. Under these circumstances appointment of Arbitrator must be done.**

**e) A bare perusal of the submissions on law put-forth by the 3<sup>rd</sup> Respondent herein in the counter affidavit indicates that a specific plea is taken by the 3<sup>rd</sup> Respondent that the pre-arbitral steps constituted in the Clause 76 of GCC are condition precedent to Arbitration and therefore it is relevant to follow such conditions if they are essential and cannot be skipped in order to take up different dispute resolution mechanism and the Respondents also placed reliance on the Judgment of the Apex Court in M.K.Shah Engineers and Contractors Vs. State of Madhya Pradesh reported in (1999) 2 SCC 594 on the point that the procedures leading up to Arbitration are of essential in nature and the same must not**



be avoided or bypassed by the parties and also placed reliance on the judgment of Karnataka High Court in the case of M/s. Shoba Limited Vs. M/s. Nava Vishwa Shashi Vijaya & Others wherein it has been held that *"where the precondition of conciliation laid down by the parties in the Agreement is not fulfilled, the application u/s. 11(6) of the Arbitration and Conciliation Act, 1996 will be considered as premature and therefore the stated procedure for conciliation is a condition precedent for invoking the Arbitration Clause"*

f) It is the specific case of the 3<sup>rd</sup> Respondent herein as averred at para 8 of the counter affidavit filed by the 3<sup>rd</sup> Respondent that the conciliation proceedings were not commenced and concluded before invoking Arbitration. A bare perusal of the contents of the notice dt. 25.05.2021 issued by the Petitioner under Clause 57 of ACC r/w Clause 76 of EPI GCC for amicable settlement and the copy of the Petitioner's notice for conciliation dt. 30.09.2021, clearly indicate the list of claims put-forth by the Petitioner to be settled through amicable settlement and further to invoke the dispute resolution clause provided under the contract for settlement of claims for conciliation in respect of work order dt.

**21.01.2015, but however, it is borne on record that the said request for conciliation though put-forth and initiated by the Petitioner did not bear fruit and it is true that the conciliation neither commenced nor concluded though initiated by the Petitioner herein as borne on record.**

**g) A bare perusal of the last 3 lines at para 5 of the counter affidavit filed by the 3<sup>rd</sup> Respondent herein clearly indicates that the Respondent had reasoned out that the claims are not tenable and therefore this Court taking into consideration the said fact and also the fact that the Petitioner herein initiated conciliation vide Petitioner's letter dt. 25.05.2021 and 30.09.2021, but however, neither actual conciliation proceedings commenced nor concluded though initiated by the Petitioner herein, this Court opines that the precondition for amicable settlement of the dispute between the parties had not been materialized and since clause 57 of ACC provides that "the parties shall make efforts to settle disputes, if any amicably". Only if amicable settlement is not possible it will be referred to Sole Arbitration. Clause 76 of GCC requires the parties to first resort to conciliation on the occurrence of any**

**dispute and the pre-arbitral steps constituted in the Clause 76 of GCC are condition precedent to Arbitration.**

**h) Section 62 of Arbitration and Conciliation Act, 1996 which deals with conciliation reads as under :**

**62. Commencement of conciliation proceedings. – (1)**

**The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.**

**(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.**

**(3) If the other party rejects the invitation, there will be no conciliation proceedings.**

**(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.**

**i) In the present case, the Petitioner's notice for conciliation is dated 30.09.2021 and the Petitioner did not receive any response from the Respondents herein till**

**23.11.2021 and through the said letter dated 23.11.2021 the Respondent offered to conciliate the dispute after the Petitioner invoked arbitration vide Petitioner's letter dt. 08.11.2021, this Court applying Sec.62 (4) opines that the Petitioner rightly invoked Arbitration in view of the fact that the Respondent did not respond to the invitation of the Petitioner to conciliate put-forth by the Petitioner on 30.09.2021, within a period of 30 days on receipt of the said invitation and the fact that the conciliation proceedings did not either commence and conclude is even admitted at para 8 of the counter affidavit filed by the 3<sup>rd</sup> Respondent and the 3<sup>rd</sup> Respondent at para 5 of the counter affidavit specifically contended that the 3<sup>rd</sup> Respondent reasoned out that the claims put-forth by the Petitioner are not tenable.**

**j) Commencement of arbitral proceedings :- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.**

**6. In view of the fact as borne on record that the Petitioner herein invoked the arbitration vide Petitioner's letter dated**

**08.11.2021 and the Respondent herein received it, as per Section 21 of the Arbitration and Conciliation Act, 1996 this Court opines that the Arbitral proceedings has already been commenced and at this stage this Court opines that the parties cannot go back conciliation.**

**7. (1) Whether the arbitration application is premature ?**

**a) The High Court for the State of Telangana in M/s. MS Construction Vs. NSPR Constructions India Pvt., Ltd., in its Judgment dated 03.06.2019 paras 19, 20 and 22 observed as under:**

**Para 19:** Next, it is the contention of counsel for 1st respondent that as per the clause dealing with disputes and settlement initially parties were to resolve the differences by mutual negotiation, if within one month from the date of the dispute, such resolution did not occur, it has to be referred to the Chief Executives of the applicant and the 1st respondent; if the Chief Executives also fail to agree. then such differences/ disputes shall be referred to a sole arbitrator to be appointed by both parties by mutual consent: and if parties fail to agree upon a sole arbitrator with mutual consent as aforesaid, each of the parties will nominate an arbitrator of their choice, and the two arbitrators so nominated shall choose a third arbitrator. He contended that the stages of negotiation, reference to Chief Executives of both parties, did not occur, and therefore, the application is premature.

**Para 20 :** The counsel for the applicant refuted the said contention and pointed out prepared to sit across the table with 1<sup>st</sup> respondent to present any details and brat in its letter M.S/010/2017 dt.04.05.2017, it had specifically stated that it is respond to any query for amicable settlement of the dispute and had requested 1<sup>st</sup> respondent to communicate a suitable date, convenient to both parties, to meet and resolve the dispute; but the 1<sup>st</sup> respondent in its letter dt.15.05.2017 did not accept applicant's request for amicable settlement taking a plea that the Job Work Agreement was cancelled with explicit consent of the applicant. He therefore contended that the 1<sup>st</sup> respondent cannot take advantage of its own failure to negotiate with the applicant as per the procedure in the Clause dealing with 'DISPUTES AND SETTLEMENT, and oppose grant of relief to the applicant.

**Para 22 : Therefore, having agreed for mutual negotiation as the first step, and having refused the request of the applicant in its letter dt.04.05.2017 for amicable settlement by such negotiation vide its letter dt.15.05.2017, it is now not open to the 1st respondent to insist that there was no mutual negotiation or that the other steps following it (such as reference to Chief Executives of both parties for resolution), did not occur. The 1<sup>st</sup> respondent cannot be allowed to take advantage of its own wrong.**

- b) This Court opines that the judgment relied upon by the learned counsel for the respondents do not apply to the facts

of the present case and the conciliation process cannot in any manner effect the right of the petitioner to invoke the Arbitration Agreement. It is borne on record that the Petitioner before invoking Arbitration had initiated steps to arrive at amicable settlement of the disputes with the Respondent, but however, such attempts have failed and therefore the plea/preliminary objection in the counter affidavit filed by the 3<sup>rd</sup> Respondent at para 5 of the preliminary objections that the Arbitration Application is premature is untenable hence the said plea is rejected.

c) In view of the fact as borne on record the Petitioner initiated conciliation by Petitioner's letter dt. 25.05.2021 and 30.09.2021, but however, neither actual conciliation proceedings commenced nor concluded and the 3<sup>rd</sup> Respondent further at para 8 of the counter affidavit specifically averred and contended that the 3<sup>rd</sup> Respondent reasoned out that the claims put-forth by the Petitioner are not tenable, the same discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke Arbitration process. Hence this Court

opines that the present Arbitration Application is not premature.

8. The next question that falls for consideration is as to whether a case is made for appointment of Arbitrator to decide the disputes between the parties ?

a) This Court opines that it is amply clear from the facts as pleaded and as well as from the exchange of correspondence between the parties referred to in particular at para 5 & 6 of the counter affidavit filed by the 3<sup>rd</sup> Respondent pertaining to submissions on facts that there has not been any satisfaction recorded by the parties with respect to their claims. There has been no mutual satisfaction arrived at between the parties as regards the dispute in hand in view of the fact that the conciliation proceedings though initiated by the Petitioner however, could not be conducted nor could therefore, be concluded and thus, the pre-condition for amicable settlement of dispute between the parties had not been materialized at all and in view of the fact that the amicable settlement could not materialize, this Court opines that there is no illegality in Petitioner invoking the Arbitration vide Petitioner's letter dt. 08.11.2021 applying Section 62(4) of Arbitration and



Conciliation Act, 1996. Admittedly as borne on record since there is a dispute and a live issue between both the parties this Court opines that arbitral procedure has to be started for resolving the live issue in between the parties.

9. Taking into consideration, the above referred facts and circumstances of the case and the view taken by our High Court in judgment dated 06.06.2019 in M/s M.S. Constructions v NSPR Constructions India Private Limited and further applying Section 62 Clause (4) of Arbitration and Conciliation Act, 1996 to the facts of the present case and in the light of the discussion and the conclusion arrived at above the present Arbitration Application is allowed as prayed for. Sri Justice L.Narasimha Reddy, Chief Justice (retired), High Court for the State of Bihar at Patna, bearing D.No.2-2-25/3/3, Durgabai Deshmukh Colony, Near O.U. Campus, Baghamburpet, Hyderabad – 13, Mobile No.9440621406, is appointed as the Sole Arbitrator to arbitrate on the dispute raised by the applicant. Both the parties are hereby directed to appear before the learned Arbitrator on 29.07.2023 at 11.00 AM whereafter, the learned Arbitrator shall proceed with the matter in accordance with law.

**10. Let a copy of this order be forwarded by the Registry to both the parties and also to the learned Arbitrator for doing the needful.**

Miscellaneous petitions, if any, pending shall stand closed.

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**SUREPALLI NANDA, J**

Date: 04.07.2023

Note: L.R. copy to be marked

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