



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 14.05.2026
Pronounced on 22.05.2026
Uploaded on 22.05.2026

Whether the operative part or full
judgment is pronounced: **Full judgment.**

Arb P No. 53/2025

M/s Hassan Roads Construction Company ...Petitioner(s)/Appellant(s)
Private Limited

Through: Mr. Z. A. Qureshi, Sr. Advocate with
M/s. Rehana, Babar Billal Malik and Muzaam
Nasir, Advocates

v/s
J&K Economic Reconstruction Agency Respondent(s)
(ERA) and ors.

Through: Mr. Illyas Nazir Laway, GA

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

1. The present petition under Section 11(6) of the Jammu and Kashmir Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) has been filed by the petitioner-company seeking appointment of an Arbitrator to adjudicate the disputes and differences that have arisen between the parties out of contract dated 07.08.2021 relating to "*the Construction of Cenral Control Building for Housing Emergency Operation Centre and SCADA System at Ompora, Budgam*".



2. According to the petitioner-company, pursuant to the NIT issued by the respondent, J&K Economic Reconstruction Agency (hereinafter referred as “ERA”), for the aforesaid work, the petitioner submitted its bid on 16.03.2021 and was declared as the lowest bidder. Consequently, a letter of acceptance letter dated 30.06.2021 was issued by respondent-ERA, whereby the work was allotted to the petitioner-company at a contract cost of Rs. 29,88,70,430/- plus Rs. 5,00,00,000/- (provisional sum). Pursuant thereto, a contract agreement was executed between the parties on 07.08.2021.
3. According to the petitioner-company, it had completed about 90% of the allotted work and, for completion of the remaining work, certain electrical and mechanical items were required, which were approved by respondent-ERA for procurement vide communication dated 22.08.2025. It has been submitted that the said items were thereafter procured by the petitioner from the companies defined by the respondents in terms of the contract. It has further been submitted that the execution of the work got delayed on account of lapses attributable to the respondents for one reason or the other, regarding which various communications were exchanged between the parties from time to time.
4. It has also been submitted that the respondents issued a letter terminating the contract, which constrained the petitioner to approach the Court of learned Additional District Judge, Srinagar, by way of a civil suit. The said suit came to be disposed of by the learned Additional District Judge, Srinagar, with a direction to the respondents to consider the representation



of the petitioner seeking extension of time for completion of the balance work. Pursuant thereto, the petitioner submitted a representation dated 21.08.2025 before the respondents, whereafter extension of 90 days came to be granted in its favour.

5. It has been submitted that the petitioner filed a petition under Section 9 of the Act of 1996 before the Court of Addl. District Judge, Srinagar on 10.04.2025 seeking an injunction against the encashment of bank guarantee. However, the said petition came to be dismissed vide order dated 06.10.2025. The petitioner challenged the said order by way of an appeal under Section 37 of the Act of 1996 before the Commercial Appellate Division of this Court, which is stated to be pending adjudication. The petitioner is stated to have invoked arbitration agreement as contained in Clause 24.4 of the agreement vide its letter dated 30.09.2025 requesting the respondents to name the arbitrator. It has been submitted that in the said letter the petitioner has named Sh.Rafiq Ahmad Rafiq, Ex Chief Engineer as its arbitrator, but the respondents despite receipt of the notice did not respond.
6. According to the petitioner, it is entitled to the following claims:

S. No.	Description of item		Amount in Rupees
1.	IIPC-21st (Bill period 11.06.2025 to 14.07.2025)		4,64,44,734
2	Variation No.3		1,32,02,210
3.	Non-BOQ items executed at site		3,05,70,235
4.	Retention money held with department		1,04,48,189
5	Bank Guarantees	Performance security Valid till 22.10.2026	1,74,43,522



		Addl. Performance security Valid till 31.12.2025	2,79,04,085
		ESHS performance Valid till 31.12.2025	34,88,705
6	Compensation due to late release of payments		44,49,007 For last 5 IPCs
7	Compensation in terms of condition 42 of the contract (compensation events)		5,97,74,086
8	Expenditure of legal proceedings		25,00,000

7. It has been submitted that the contract could not be completed because of the default of the respondents and the respondents have terminated the contract of the petitioner despite their fault, as a result of which the Bank was not ready to give Bank guarantees to the petitioner unless 100% security in the form of deposits is furnished to it. This has caused damage to the tune Rs. 300 lacs to the petitioner.
8. The respondents have filed their reply to the petition, wherein it has been submitted that the person who has instituted the petition on behalf of the petitioner-company is not duly authorized to do so. It has further been submitted that the petitioner has not invoked the arbitration clause in the manner contemplated under the agreement. The respondents have also contended that no arbitrable dispute exists between the parties and, therefore, the matter is not eligible to be referred to an Arbitral Tribunal.
9. According to the respondents, the petitioner has already filed a civil suit regarding the subject matter before the learned Munsiff, Panthachok and has obtained ex parte order dated 25.08.2025. It has further been submitted that the petition filed by the petitioner under Section 9 of the Act of 1996 before the designated Commercial Court, Srinagar, stands



dismissed vide judgment dated 06.10.2025, against which the petitioner has preferred an appeal. It has also been submitted that the petitioner has filed another writ petition bearing WP(C) No. 40/2026 in relation to the same subject matter.

10. According to the respondents, the petitioner failed to fulfill its contractual obligations and could not complete the critical disaster management project even after the lapse of half a decade, despite the stipulated period of completion being only 12 months. It has been submitted that the contract, which is the subject matter of the present petition, was awarded to the petitioner for an amount of Rs. 34,88,70,430/- with the objective of providing services to the general public during emergency and disaster situations. According to the respondents, the original completion period under the contract was 12 months and the scheduled date of completion was 20.09.2022; but despite grant of four extensions up to 31.10.2024, the petitioner failed to complete the work.
11. It has been submitted that, in view of the persistent non-performance and fundamental breach of obligations under Clause 57.2 of the General Conditions of Contract (GCC), the contract came to be terminated vide communication dated 01.04.2025, whereafter post-termination measures, including takeover of the site, forfeiture of securities and re-tendering of the balance work, were initiated. It has further been submitted that, pursuant to the order dated 07.05.2025 passed by the learned Additional District Judge, Srinagar, the termination order was revoked vide communication dated 02.06.2025 after approval from the competent



authority, and the petitioner was granted a further period of 90 days to complete the work. According to the respondents, the petitioner failed to fulfill the terms and conditions of the revocation order dated 02.06.2025 and did not complete the balance work within the stipulated period. As a consequence thereof, and in terms of the explicit conditions contained in the revocation order, the contract automatically stood terminated upon expiry of the extended period of 90 days. It has also been submitted that vide communication dated 01.09.2025, it was confirmed that the contract awarded to the petitioner stood terminated with effect from 31.08.2025 and actions, including encashment of the bank guarantee, initiation of post-termination proceedings and re-tendering of the balance work, were undertaken by the respondents.

12. On the basis of the aforesaid submissions, the respondents have contended that the appointment of an Arbitrator would be unnecessary and it would entail an unwarranted financial burden upon the respondent-organization on account of the arbitral proceedings.
13. I have heard learned counsel for the parties and perused the record of the case including contract/documents executed by the parties on 07.08.2021.
14. The objection raised by the respondents about the authority of the person who has filed the petition on behalf of the petitioner has been addressed by the petitioner by placing on record copy of the Board resolution dated 01.07.2021, whereby signatory to the petition stands authorized to institute and pursue the instant petition on behalf of the petitioner-company.



15. That takes us to the merits of the case. In this regard, learned counsel appearing for the respondents, Mr. Illyas Nazir Laway, Government Advocate, has contended that in terms of Clauses 23 and 24 of the GCC, the petitioner has not taken resort to reference of the disputes to the Adjudicator/Dispute Review Expert (DRE) before seeking reference of the disputes to the Arbitral Tribunal. It has been contended that, without adhering to the aforesaid procedure, which has been agreed upon by the parties under the contract, it was not open to the petitioner to invoke the arbitration clause.
16. In order to determine the merits of the aforesaid contention raised by learned counsel for the respondents, it would be necessary to notice the covenants contained in Clauses 23 and 24 of the GCC:

23. Appointment of the Adjudicator or Dispute Review Expert	23.1. The Adjudicator/Dispute Review Expert (DRE) named in PCC shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator/DRE, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator/DRE within 14 days of receipt of such request. 3.1.1 The Adjudicator/DRE should be in position before "notice to proceed with work" is issued to the Contractor and an agreement should be signed with the Adjudicator/DRE jointly by the Employer and the Contractor in the form attached – Appendix 3. 23.2 Should the Adjudicator/DRE resign or die, or should the Employer and the Contractor agree that the Adjudicator/DRE is not functioning in accordance with the provisions of the Contract; a new Adjudicator/DRE shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator/DRE shall be designated by the Appointing Authority designated in the PCC at the request of either party, within 14 days of receipt of such request.
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24. Procedure for	24.1 If the Contractor believes that a decision taken by the Project
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disputes.	Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator/DRE within 14 days of the notification of the Project Manager's decision. 24.2 The Adjudicator/DRE shall give a decision in writing within 28 days of receipt of a notification of a dispute. 34.3 The Adjudicator/DRE shall be paid daily at the rates specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the Contractor. Whatever decision is reached by the Adjudicator/DRE, either party may refer that decision to an Arbitrator within 28 days of the Adjudicator's/DRE's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's/DRE's decision shall be final and binding. 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the PCC. The Arbitrator(s) shall give a decision in writing within 120 days of start of the proceedings unless otherwise agreed to by the Parties. The Arbitrators shall entertain only those issues which have been earlier referred to the Adjudicator/Dispute Review Expert and either party is dissatisfied with the decision given by the Adjudicator/Dispute Review Expert.
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17. It would also be pertinent to refer to relevant covenants of Particular Conditions of the Contract (PCC), which relate to appointment of adjudicator/DRE and the procedure for arbitration:

GCC 23.1 & GCC 232.	Sh. Mohd Iqbal (Retd) Chief Engineer PWD Appointing authority for the Adjudicator/Dispute Review Expert: Chairman, Institution of Engineers Srinagar Chapter.
GCC 24.3	Daily rate and types of reimbursable expenses to be paid to the Adjudicator/Dispute Review Expert: INR 5000/day



GCC 24.4.	The procedure for adhoc arbitration will be as follow: (a) In case of dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such dispute or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Chairman of the Institution of Engineers (Srinagar Chapter). If one of the parties fails to appoint its Arbitrator in pursuance of sub-clause (a) above within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, Chairman of the Institution of Engineers (Srinagar Chapter), shall appoint the Arbitrator. A certified copy of the order of the Chairman of the Institution of Engineers (Srinagar Chapter), making such an appointment shall be furnished to each of the parties. (b) Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Project Manager, the Contractor and the Adjudicator shall not be altered by reason of the arbitration being conducted during the progress of the Works. (c) Arbitration proceedings shall be held at Srinagar, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English. (d) The decision of the majority of Arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself. (e) The Arbitrator should give final award within 180 days of starting of the proceedings. (e) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.
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18. Reference is also required to be made to Clause-2 of General Conditions of Contract, which relates to interpretation:

Interpretation	2.1. In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC. 2.2 If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works). 2.3 The documents forming the Contract shall be interpreted in the following order of priority: a) Agreement, b) Letter of Acceptance, c) Contractor's Bid & Priced Bill of Quantities, d) Particular Conditions of Contract, e) General Conditions of Contract including Appendices, f) Specifications, g) Drawings, and h) Joint Venture Agreement [where applicable] i) Any other document listed in the PCC as forming part of the Contract.
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19. A perusal of Clause 23 of the GCC, as reproduced above, reveals that the parties had agreed that an Adjudicator/DRE would be appointed jointly by the Employer and the Contractor and, in the event the Employer did not agree to such appointment, a request was to be made to the appointing authority designated in the PCC for appointment of an Adjudicator. In this regard, the PCC contains a stipulation to the effect that Sh. Mohd. Iqbal, retired Chief Engineer (PWD), had been appointed as the Adjudicator/DRE by the parties. Clause 23.1.1 as quoted above, *inter alia*, provides that an agreement should be signed with the Adjudicator/DRE



jointly by the Employer and the Contractor in the form attached-Appendix-3.

20. Learned counsel for the petitioner has produced original contract executed between the parties. However, this Court could not find the document in Appendix-3 in the said contract, nor the respondents have placed on record or pleaded execution of any such document by the Employer and the Contractor with the named Adjudicator/DRE. Thus, it has to be presumed that agreement between the Adjudicator/DRE with the Employer and the Contractor has not been executed by the parties.
21. As per Clause 24.1 of GCC, if the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager or that the decision was wrong, the said decision has to be referred to the Adjudicator/DRE within 14 days, whereupon the Adjudicator/DRE has to take a decision in writing within 28 days. As per Clause 24.3 of the GCC, either parties may refer the decision to the Arbitrator within a period of 28 days from the decision of Adjudicator/DRE and if the same is not done, decision of the Adjudicator/DRE would become final and binding.
22. In the present case, admittedly, the petitioner has not referred any decision of the Project Manager to the Adjudicator/DRE. The question that arises for determination is whether, in these circumstances, the petitioner is entitled to invoke the Arbitration Clause directly without first availing the remedy of approaching the Adjudicator/DRE. The whole thrust of arguments of learned counsel for the respondents is on this



aspect of the matter. He has contended that without approaching the adjudicator/DRE, the petitioner could not have invoked the arbitration clause and it is only the decision of the Adjudicator/DRE, which can be referred to arbitration, and not any other decision.

23. The argument raised by the learned counsel for the respondents, at its first blush, appears to be attractive but upon its detailed examination, it prima facie appears that resort to the mechanism of approaching the Adjudicator/DRE was not feasible and suitable for the petitioner in the facts and circumstances of the present case. Firstly, because no agreement appears to have been executed between the Adjudicator/DRE jointly with respondent-ERA and the petitioner/contractor. Therefore, condition stipulated in Clause 23.1.1 of the GCC has not been satisfied in the present case, as such, the forum of Adjudicator/DRE was not available to the petitioner.
24. There is yet another aspect of the matter, which is required to be noticed by this Court. The petitioner is primarily aggrieved of the action of the respondents in terminating the contract and consequential measures taken thereafter, which include encashment of bank guarantee, initiation of post termination proceedings as per the clauses of the contract agreement and re-tendering of the balance work at the risk and cost of the petitioner. All these actions have been taken by the Employer and not by the Project Manager. The Project Manager is an authority distinct from the Employer and cannot be equated with the Employer. As per clause 4 of GCC, the



Project Manager is decision making authority on contractual matters between the Employer and the contractor.

25. In terms of clause 24 of the GCC, it is only the decision taken by the Project Manager, which can be brought before the Adjudicator/DRE by a Contractor, if he is aggrieved of the said decision. Any decision taken by the Employer, including a decision relating to terminating of the contract and subsequent actions initiated against the Contractor in terms of the covenants of the contract, cannot be made subject matter of deliberation before the Adjudicator/DRE. Thus, the petitioner could not have raised the disputes which are subject matter of the present petition before the Adjudicator/DRE in terms of the Clause 24 of the GCC.
26. It is true that in terms of Clause 24.3 of GCC, only the decisions taken by the Adjudicator/DRE can be referred to the arbitration by the aggrieved party, but if we have a look at the arbitration clause contained in the PCC, it is comprehensive in nature, inasmuch as, it provides that in case of disputes or differences arising between the Employer and the Contractor relating to any matter, arising out of or connected with the agreement, such disputes or differences have to be settled in accordance with the provisions of the Arbitration and Conciliation Act 1996. The arbitration clause contained in the PCC is of wide amplitude. Therefore, any dispute arising between the Employer and the Contractor, which does not fall within the realm of disputes referable to the Adjudicator/DRE, can also be referred to arbitration.



27. Besides this, a perusal of the documents placed on record, which include the communications exchanged between the parties among themselves would make it abundantly clear that settlement between them through the medium of an Adjudicator/DRE was not possible. Therefore, the condition in the contract providing for arbitration of only those disputes which have been referred to the Adjudicator/DRE is not possible, particularly on account of decision relating to termination of contract having been taken by the respondents. Therefore, no pre-arbitration procedure available to the petitioner, could have been exhausted by it prior to seeking appointment of the Arbitrator.
28. In the above context, I am supported by the ratio laid down by the Supreme Court in the case of **Visa International Limited vs. Continental Resources (USA) Ltd.** (2009) 2 SCC 55 and a decision of the Bombay High Court in the case of **Quick Heal Technologies Ltd. vs. NCS Computech Pvt and Anr.** 2020 SCC Online Bombay 687. Relying upon the ratio laid down in the aforesaid cases, the Bombay High Court in the case of **Generic Engineering Construction and Project Ltd. vs. Maharashtra Maritime Board**, 2026 SCC Online Bom 2733 has held that in a case where few other clauses in the contract may be slightly inconsistent or may be in conflict with the main arbitration clause, the Courts will have to rule in favour of the arbitration rather than giving weightage to those confusing or conflicting clauses. The Court held that once there is clear agreement to arbitrate, the courts would tend to ignore other clauses of contract which may create confusion about existence of



arbitration agreement. It was observed that arbitration is aimed at declogging the overburdened courts and therefore courts need to necessarily rule in favour of arbitration rather than concentrating on other inconsistent clauses for holding that specific arbitration clause present in the contract would get nullified by those clauses.

29. In view of the aforesaid position of law, despite there being mechanism provided in the GCC for reference of the decision of the Project Manager to the Adjudicator/DRE, this Court having regard to the wide scope of the arbitration clause contained in PCC, is inclined to hold that the present petition is maintainable. In fact the Supreme Court in the case of **Maharashtra State Electricity Distribution Company Limited (MSEDCL) v. R Z Malpani**, 2026 LiveLaw (SC) 356, has held that courts should follow the principle of ‘When in doubt, do refer’ and lean towards referring matters to arbitration when the arbitration agreement is prima facie existent. Apart from this, in terms of Section 16 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal is competent to rule upon its own jurisdiction. Therefore, it shall be open to the respondents to raise the issue of jurisdiction before the arbitral tribunal itself.
30. For the forgoing discussions, this Court is of the prima facie opinion that the disputes between the parties are arbitrable in nature and that the remedy of arbitration is available to the petitioner in the facts and circumstances of the case.



31. In view of the above, the petition is disposed of by referring all the disputes and differences covered by the agreement to the learned Sole Arbitrator in the following terms:

- (i) Hon'ble Mr. Justice Ali Mohammad Magrey, former Chief Justice, High Court of J&K and Ladakh is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.
- (ii) A copy of this order be communicated to the learned Sole Arbitrator by the Registry of this Court within a period of ten days from today.
- (iii) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the Act of 1996 to the parties within a period of two weeks from the date of receipt of this order.
- (iv) The parties shall appear before the learned Sole Arbitrator on a date and place to be fixed by the learned Sole Arbitrator.
- (v) All the arbitral costs and fee of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to final award that may be passed by the learned Arbitrator in relation to the costs.

(SANJAY DHAR)
JUDGE

SRINAGAR
22.05.2026
Karam Chand

Whether the order is speaking: Yes
Whether the order is reportable: Yes