

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
AC No. 131 of 2025
(FALGUNI NIRMAN PRIVATE LIMITED Vs HAMIDIA HOSPITAL)

Dated : 20-03-2026

Shri Arjun Bajpai - Advocate for the petitioner.

Shri Gaurav Maheshwari-Advocate for the respondent.

The present petition has been filed for appointment of Arbitrator for adjudication of disputes arising between the parties in relation to contract executed between the petitioner on one side and the respondent on other side for the work of setting up operation, management, and maintenance of CT and MRI diagnostic facilities at Hamidia Hospital associated to Gandhi Medical College Bhopal.

2. The counsel for the petitioner has submitted that various disputes have arose between the parties in relation to payment to be made to the petitioner under the terms of contract and as to the tenure of the contract in as much as the petitioner contends that the tenure has been extended to 10 years, whereas the respondent has denied such extension to have taken place and it is the case of respondent that the validity of the contract period is only 7 years as was initially provided in the contract agreement. Therefore, disputes have arisen which need to be adjudicated by arbitrator and there is a arbitration clause in the agreement which is in the following terms:-

"10.6 In the event of any dispute or difference arising out to this agreement/contract and/ Directorate of Medical Education, Bhopal or in relation to the implementation hereof, the same shall be resolved initially by mutual discussion and conciliation between the Service Provider and Authority. But in the event of failure thereof, the same shall be referred to Commissioner, Medical Education; Sole arbitrator, whose decision thereon

shall be final & binding on both the parties. The place of the arbitration will be at Bhopal."

3 . *Per contra*, it is contended by counsel for the respondent that though there is an arbitration clause, but it is not an unqualified arbitration clause, but it is qualified by conciliation because it has been provided that in case of any dispute or difference, the same shall be resolved initially by mutual discussion and conciliation, but in the event of failure, it shall be referred to arbitrator and the place of arbitration shall be at Bhopal. It is therefore contended that the pre-requisite of conciliation under the arbitration clause has not been carried out and the application is premature.

4. Second objection is taken that as per judgment of the Hon'ble Supreme Court in case of *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826* any dispute of any kind concerning works contract of the State Government, the jurisdiction would lie only before the tribunal constituted under MP Madhyastham Adhikaran Adhiniyam 1983 and therefore in the present case the dispute is a works contract because the clauses of the contract also involve construction activity. Reference is made to following clauses of the agreement by contending that para 2 of the RFP which is the introductory clause, the contractor was required to construct and renovate the facility and construction activities part and parcel of the agreement. The relevant clause two of introductory clause is as under -

"2. INTRODUCTION

It is intended to setup, operate and manage (i/c maintenance) CT scan and MRI Diagnostic facility for the patients of allied Hospitals of GMC. For setting up this facility the GMC, Bhopal will provide constructed building on as-is and where-is basis in their Hamidia hospital premises, where the Service Provider

will construct renovate the facility and install, operate, manage & maintain a 64 Slice CT Scan and 1.5 Tesla MRI machine for providing diagnostic services to the patients. The approximate number of patients referred by the Hospital in the last one year was around 4500-5000 cases for CT Scans and 2000-2500 cases for MRI Scans respectively.

The Commissioner Medical Education (CME), Government of MP is inviting proposals for establishing a CT scan and MRI facility for Gandhi Medical College, Bhopal and allied/associated Hospitals. The contract shall be executed between successful bidder and Dean, GMC, Bhopal (Authority)."

5. The aforesaid assertion was countered by counsel for the petitioner by stating that it was only such renovation/modification which was necessary for fitment of the machines and the "construction" referred in the RFP is not a construction activity but only such renovation or modification by way of construction which is necessary for fitment of CT and MRI machines because clause 7.15 clearly prohibits structural modifications in the building. Clause 7.15 is as under:-

"7.15 Structural modification will not be permitted"

6. It is further argued that even as per the terms of contract, the building has to be provided by the Medical College which as per clause 7.1 of the RFP which mentions that 2700 square feet constructed hospital building would be provided with installed fixtures, fittings, etc. and in the said building, the machines would be fitted and then run.

7. This court has heard the learned counsel for the parties at length.

8. Firstly, the question as regards the agreement to be a works contract and therefore jurisdiction to lie before the MP Madhyastham Adhikaran is taken up. As per. Section 2(i) of MP Madhyastham Adhikaran Adhiniyam works contract is defined as under:-

"2(i) "works-contract" means an agreement in writing or a letter of intent or work order issued for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformer or such other works of the State Government or Public Undertakings or of the Corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or by Public Undertakings or Corporation or by any official of the State Government for and on behalf of such Corporation or Public Undertakings and includes an agreement for supply of goods or material and all other matters relating to the execution of any of the said works and also includes the services so hired for carrying out the aforesaid works and shall also include all concession agreement, so entered into by the State Government or public undertakings or Corporation, wherein a State support is involved or not."

[The agreements in writing for the execution of the work relating to construction, repair or maintenance of electric lines, water supply and sewerage/drainage system shall also be "works contract"]

(2) Words and expressions used but not defined in this Act, but defined in the Arbitration Act shall have the meanings assigned to them in the Arbitration Act."

9. Therefore essentially the works contract has to be contract for construction work of the nature as mentioned in section 2 (i). In the present case, from a perusal of the terms of agreement it is clear that the agreement is basically for setting up, operation, management, and maintenance of CT and MRI diagnostic facilities at Hamidia Hospital associated to Gandhi Medical College, Bhopal. Therefore, it is not an agreement for construction or maintenance of a building, but it is an agreement for maintenance and operation of CT and MRI Center. Clause 2 of the RFP, though, mentions that the operator/service provider will construct/renovate the facility, but at the same time, clause 7.1 makes it clear that the hospital would provide all the requisite facilities along with the building of 2700 square feet, which is already constructed building with its fixtures, fittings on "as is where is" basis for running of the CT and MRI center. As per clause 7.15, it is further clarified that no structural modification will be permitted.

10. Therefore, it is clear that the only those modifications and renovations which were necessary for fitment of the CT and MRI machines in a vacant building to be handed over by the Medical College was to take place and only those necessary civil works which were necessary for fitment of the machines were to be carried out and the introductory clause is nothing but clarificatory clause that the essential civil works which are required for fitment of the machines would not be done by the Medical College, but would be the responsibility of the contractor. Otherwise, it is not a work for construction of a center, but rather it's a work for running for establishment and maintenance of an CT and MRI center. It is natural that if any vacant building is handed over and in the building some machines are to be fitted, then that fitment would require some essential civil work and merely because some civil work is required for fitting the machines, whereas the agreement is for fitment and running of the said machines, it would not tender the agreement to render the agreement to be a works contract and therefore, the objection as to the contract being the works contract and jurisdiction lying before the MP Arbitration Tribunal under Adhinyam 1983 is discarded.

11. So far as the other issue of there being conciliation clause in the agreement is concerned, the said conciliation clause only provides that upon arising of a dispute or difference, the same shall be resolved initially by mutual discussions and conciliations. The aforesaid clause has to be seen in perspective of Section 77 of Arbitration and Conciliation Act which is as under:

"77. Resort to arbitral or judicial proceedings. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in

respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights."

12. Section 77 only prohibits the parties from initiating any arbitral or judicial proceedings during pendency of conciliation proceedings. The Hon'ble Supreme Court in the case of *Demerara Distilleries Private Limited v. Demerara Distilleries Limited, (2015) 13 SCC 610* has held that any clause providing resolution of disputes by mutual discussions and mediation, etc., would be empty formality once there are serious disputes arising between the parties. It has been held that once a dispute has arisen between the parties, then it is difficult to hold that arbitration clause is not invocable. In *Intercontinental Hotels Group (India) (P) Ltd. v. Waterline Hotels (P) Ltd., (2022) 7 SCC 662*, the Apex Court has held that "when in doubt, do refer". Further, it has been held by Delhi High Court in the case of *Ravindra Kumar Verma v. BPTP Ltd., 2014 SCC OnLine Del 6602* as under :

"11. Whereas the existence of conciliation or mutual discussion should not be a bar in seeking to file proceedings for reference of the matter to arbitration and which is necessary for preserving rights as envisaged by Section 77 of the Act, however, since in many contracts there is an effective need of conciliation etc. in terms of the agreed procedure provided by the contract, the best course of action to be adopted is that existence of conciliation or mutual discussion procedure or similar other procedure though should not be held as a bar for dismissing of a petition which is filed under Sections 11 or 8 of the Act or for any legal proceeding required to be filed for preserving rights of the parties, however before formally starting effective arbitration proceedings parties should be directed to take up the agreed procedure for conciliation as provided in the agreed clause for mutual discussion/conciliation in a time bound reasonable period, and which if they fail the parties can thereafter be held entitled to proceed with the arbitration proceedings to determine their claims/rights etc.

12. In view of the above, though this petition is dismissed and the impugned order is sustained by which the application under Section 8 of the Act has been allowed, it is however directed that before arbitration proceedings are effectively pursued, parties must resort to mutual discussions within a time bound reasonable period. In case, mutual discussions or conciliation

proceedings do not successfully conclude within the time bound reasonable period of say three months, thereafter arbitration proceedings for determination of the rights can be continued. I note that I am fixing a period in this case because contractually no period has been prescribed for mutual discussion/conciliation procedure. This petition is accordingly dismissed and disposed of subject however to the aforesaid observations with respect to mutual discussion/conciliation procedure."

13. Further in the case of **Abhi Engg Corpn. (P) Ltd. v. NTPC Ltd.**, 2022 SCC OnLine Del 4956 it has been held by the Delhi High Court as under:-

"15. A reference has also been made to the decision of this Court in Kunwar Narayan v. Ms. Ozone Overseas Pvt. Ltd. in ARB.P. 538/2020 decided on 10th February, 2021, wherein a similar mechanism for resolution of disputes was provided. Reliance has also been place on Demarara Distilleries Pvt. Ltd. v. Demerara Distillers Ltd. (supra) and Ravindra Kumar Verma v. BPTP Ltd., 2014 SCC OnLine Del 6602, wherein it was observed that nothing worthwhile would be achieved by relegating the parties to explore any avenue of amicable resolution. Besides, the appointment of an Arbitrator by this Court would not act as an impediment to the parties to resolve their disputes amicably should it be possible at any point of time.

16. In the present case, considering the nature of dispute, it may be an empty formality as observed above, to relegate the parties to first explore the possibility of mutual consultation. Moreover, this cannot be considered as a ground to dismiss the present petition under Section 11(6) of A&CAct, 1996."

14. In the present case, there is admittedly a serious dispute between the parties and dismissal of the application under Section 11 would only be relegating the parties to empty formality because in the entire reply filed before this court, it is not contended by the respondent that it is willing to conciliate the matter with the petitioner. Even in the reply to the notice which is placed on record as Annexure A/2 though objection is taken that conciliation has not taken place, but there is nothing in the said notice that the respondent is willing to sit across the table and conciliate with the petitioner. Therefore, a dispute has indeed arisen within the parties. It is open for the parties to conciliate before the Arbitration proceedings commence.

15. In view of the aforesaid, this Court deems it appropriate to appoint a sole arbitrator for adjudication of disputes arising between the parties.

16. Resultantly, the application is allowed this court proposes to appoint *Shri Justice Rohit Arya, Former Judge, MP High Court*, as sole arbitrator to adjudicate the disputes between the parties.

17. Let necessary consent, disclosure and undertaking of the proposed arbitrator be sought by the Registrar Judicial of this court.

18. List on 07.04.2026 for further orders.

(VIVEK JAIN)
JUDGE

MISHRA