



Serial No. 052023:JKLHC-JMU:2499

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

Case:- CM No. 154/2025 in
Arb P No. 16/2023

M/s Tarmat Ltd.Appellant(s)/Petitioner(s)

Through: Mr. R. K. Gupta, Sr. Advocate with
Ms. Ishna Vaid, Advocate.

Vs

Union of India and others Respondent(s)

Through: Mr. Vishal Sharma, DSGI.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(02.06.2025)

1. A contract No. CA No. CEAUFU-09/2012-13 read with No. 85014/CEAFLI-16-93/E8 dated 19.05.2012 with respect to the contract work of "**Resurfacing of Runway at Awantipur, Kashmir**" was executed between the petitioner-M/s Tarmat Ltd., as contractor and the Union of India through Chief Engineer, (AF), Zone Air Force Station, Udhampur as the principal. The said contract was bearing an arbitration clause.

2. Dispute/s having arisen out of the said contract between the contracting parties led them to invoke arbitration clause by seeking appointment of an arbitrator for which a petition Arb P No. 36/2019 titled "**M/s Tarmat Ltd. Vs. Union of India and others**" came to be preferred before the Hon'ble Chief Justice of High Court of Jammu & Kashmir and Ladakh wherein by virtue of an order dated 10.03.2023, Sh. Prakash Makhijani, Jt. DG (C), MES (Retd.)



came to be nominated as a sole arbitrator to arbitrate upon the dispute so obtaining between the parties.

3. In terms of said order dated 10.03.2023, the sole arbitrator appointed Sh. Prakash Makhijani, Jt. DG (C) MES (Retd.), was left to his discretion to charge the prescribed fee along with incidental expenses to be shared by the parties in the matter of carrying out the arbitration proceedings and making an award.

4. Sh. Prakash Makhijani, Jt. DG (C) MES (Retd.), appointed as sole arbitrator, came to recuse himself without entering upon the reference by due intimation to both sides which constrained filing of a petition Arb P No. 16/2023 under section 14 & 15 of the J&K Arbitration & Conciliation Act, 1997 for seeking supply of new arbitrator in substitution and, accordingly, Sh. Sorabh Mathur, Jt. DG (Retd.) MES came to be appointed as a sole arbitrator on the similar terms and conditions as set out in the principal order dated 10.03.2023.

5. The appointment of Sh. Sorabh Mathur, Jt. DG (Retd.) MES as a sole arbitrator took place on the consensus of both sides given the fact that Sh. Sorabh Mathur, Jt. DG (Retd.) MES was on panel of standing arbitrators of the Ministry of Defence, Government of India.

6. Sh. Sorabh Mathur, Jt. DG (Retd.) MES, sole arbitrator, is said to have carried out the arbitration proceedings to arrive on the verge of conclusion just awaiting making of final award.



7. Sh. Sorabh Mathur, Jt. DG (Retd.) MES, sole arbitrator is said to have charged the arbitration fees as prescribed under 4th Schedule.

8. The appointment of Sh. Prakash Makhijani, Jt. DG (C) MES (Retd.) originally named sole arbitrator had taken place in March, 2023 when the J&K Arbitration and Conciliation Act, 1997 had ceased to be the law in the UT of J&K on account of J&K Reorganization Act, 2019 repealing J&K Arbitration and Conciliation Act, 1997 and replacing it with the Arbitration and Conciliation Act, 1996.

9. Incidentally, in the J&K Arbitration and Conciliation Act, 1997 under the aegis of which the appointment of Sh. Prakash Makhijani, Jt. DG (C) MES (Retd.) followed by his substitution by Sh. Sorabh Mathur, Jt. DG (Retd.) MES as an arbitrator had taken place, section 31(8) provided that unless otherwise agreed by the parties, the cost of arbitration to be fixed by the arbitral tribunal. Costs also included the fee of the arbitrator.

10. For the facility of reference, this Court reproduces section 31(8) of the J&K Arbitration and Conciliation Act, 1997:

“(8) Unless otherwise agreed by the parties.-

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify,-

- (i) the party entitled to costs,
- (ii) the party who shall pay the costs,
- (iii) the amount of costs or method of determining that amount, and



- (iv) the manner in which the costs shall be paid.

Explanation:- For the purpose of clause (a), “costs” means reasonable costs relating to-

- (i) the fees and expenses of the arbitration and witnesses,
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.”

11. In the order dated 10.03.2023 passed by the Hon’ble Chief Justice, High Court of Jammu & Kashmir and Ladakh thereby first appointing Sh. Prakash Makhijani, Jt. DG (C) MES (Retd.) as an arbitrator, it was reserved in his favour the discretion to charge the prescribed fee.

12. When the arbitration proceedings in the case were being conducted by Sh. Sorabh Mathur, Jt. DG (Retd.) MES, the sole arbitrator, the Arbitration and Conciliation Act, 1996 had come forward with the regime of charging of arbitration fees by an arbitral tribunal.

13. In this regard, section 31(8) of the Arbitration and Conciliation Act, 1996 which, to began with, was in pari materia with section 31(8) of the J&K Arbitration and Conciliation Act, 1997, came to be amended w.e.f. 23.10.2015 by Act No. 3 of 2016.

14. Amended section 31(8) of the Arbitration and Conciliation Act, 1996 came to read as under:

“31(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A.”



15. Section 31-A of the Arbitration and Conciliation Act, 1996 bearing caption “Regime for Costs” came forward in laying down in detail the modalities and mode relatable to determination and payment of costs of arbitration.

16. For the facility of reference, section 31-A of the Arbitration and Conciliation Act, 1996 is reproduced as under:

“31A. Regime for costs.-- (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine--

(a) whether costs are payable by one party to another;

(b) the amount of such costs; and

(c) when such costs are to be paid.

*Explanation.--*For the purpose of this sub-section, "costs" means reasonable costs relating to--

(i) the fees and expenses of the arbitrators, Courts and witnesses; जयते

(ii) legal fees and expenses;

(iii) any administration fees of the institution supervising the arbitration; and

(iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the court or arbitral tribunal decides to make an order as to payment of costs,

(a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or

(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including--

(a) the conduct of all the parties;



(b) whether a party has succeeded partly in the case;

(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and

(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay--

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen."

17. The introduction of section 11(3-A) is by way of amendment Act No. 33 of 2019 by its section 3(i) coming into force w.e.f. the date to be notified.

18. In terms of section 11(3-A) of the Arbitration and Conciliation Act, 1996 which came into force w.e.f. 19.08.2019, the appointed arbitrators out of empanelled are held to be entitled to such fee @ as specific in the 4th Schedule.

19. Thus, 4th Schedule provides fee under the Arbitration and Conciliation Act, 1996 is what is and is to be meant by the 'Prescribed Fee'.



20. In the present case, learned arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES has stated his arbitration fees which is meant to be payable in equal share by both sides.

21. The arbitrator has charged his arbitration fees as per 4th Schedule under the Arbitration and Conciliation Act, 1996.

22. The arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES is said to have reserved the arbitration case for pronouncement of the award after having availed six months' extension of time in terms of an order dated 13.02.2025 passed in Arb P No. 95/2024.

23. It is stated at the bar that one of two parties i.e. Contractor-M/s Tarmat Ltd., has paid its share of fee as claimed and charged by the sole arbitrator, Sh. Sorabh Mathur, Jt. DG (Retd.) MES which has been levied by following the Prescribed Scale of fee as set up in the 4th Schedule of the Arbitration and Conciliation Act, 1996 in terms of section 11(3-A).

24. When the Principal i.e. Union of India was called upon to pay its share of fee as charged by the sole arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES, the Union of India acting through its Garrison Engineer 8 FBSU (AF) has come forward with an application CM No. 154/2025 before this Court seeking modification of order dated 10.03.2023 passed in the petition Arb P No. 36/2019 and order dated 19.05.2023 passed in the petition Arb P No. 16/2023 and further claiming that the prescribed fee admissible to



the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES for conducting the arbitration proceedings is to be the one as prescribed by the Engineer in Chief's Branch Military Engineering Service and as mentioned in the letter of Empanelment dated 07.02.2022.

25. It is stated at the bar that arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES is not inclined to accept and receive the scale of fee as intended to be payable from the end of the Union of India and that has created a stalemate whereby on the one hand the award is awaiting to be announced by the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES whereas on the other hand the contractor M/s Tarmat Ltd., is caught in a catch 22 situation in having paid its part of fees as claimed by the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES but the Union of India, as being the principal, is staying adamant to pay to the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES, the fee as per its scale of fees meant for empanelled arbitrators.

26. It is at this stage, this Court is to take call for taking the matter forward for facilitating the pronouncement of award by the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES.

27. Without meaning prejudice to the both sides as well as to the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES in the context of the controversy involved, this Court deems it appropriate to direct that let the Union of India deposit the fee as claimed by the



arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES as per the share attributed to the Union of India without prejudice to its right to contest the fee levied and demanded by the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES and is, accordingly, directed to be so deposited within a period of thirty days from today with the Registrar Judicial, Jammu which is to be then kept in a fixed deposit.

28. In view of the direction hereby given with respect to deposit of the fee by the Union of India to take place within the time given, the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES may proceed with the pronouncement of the award in the matter in accordance with the Jammu & Kashmir Arbitrator and Conciliation Act, 1997 by forwarding a copy thereof to be placed on record of this petition as well.

29. List on 25.07.2025.

30. A copy of this order be forwarded to the arbitrator Sh. Sorabh Mathur, Jt. DG (Retd.) MES for the sake of notice.

(RAHUL BHARTI)
JUDGE

JAMMU
02.06.2025
Shivalee