

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

15.

+

ARB.P. 430/2016

GWALIOR BYPASS PROJECT LIMITED

..... Petitioner

Through: Mr. Manoj K. Singh with Mr. Nilava
Banarjee, Mr. Rahul Pandey, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA Respondent

Through: Mr. Mukesh Kumar with Ms. Gunjan
Sinha Jain, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

04.10.2016

%

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 filed by Gwalior Bypass Project Limited for referring to arbitration the disputes between the Petitioner and the Respondent, National Highway Authority of India ('NHAI'), arising out of the contract for design, construction, finance, operation and maintenance of the new four lane Gwalior Bypass Project of the length 42.033 km from km 103.00 of NH-3 to km 16.00 on NH-75 in the state of Madhya Pradesh.

2. The project was awarded to the Petitioner by way of a Concessionaire Agreement (CA) dated 9th October 2006. The project was to be completed by 8th October 2009.

3. The objection raised by NHAI to the reference of the disputes to

arbitration is that by way of two Supplementary Agreements (SAs) dated 18th December 2012 and 1st July 2015, all the claims of the Petitioner arising from the CA have already been settled and there remains no dispute to be referred to arbitration.

4. Having examined both SAs, the Court is of the *prima facie* view that they appear to deal with first four annuities and a part of the fifth annuity that was due to the Petitioner in terms of the CA. The supplementary agreements themselves state that all terms and conditions stipulated in the main agreement would remain the same and that the supplementary agreements are “without prejudice to the rights and contentions of the parties”. Therefore, the Court is unable to come to any definite conclusion at this stage on the SAs demonstrating that all claims of the Petitioners have been fully and finally settled. Whether in fact any part of the claim of the Petitioner is covered by either SA can be examined by the Arbitral Tribunal (‘AT’) on an objection being raised to that effect by the NHAI.

5. It is seen that the Petitioner has, in terms of the arbitration clause which envisages a three-Member AT, nominated Mrs. Madhurima Mridul, Advocate as its sole Arbitrator.

6. This Court appoints Mr. Justice V. K. Shali, residing at A-8, Pamposh Enclave, Greater Kailash-I, New Delhi – 110048 (Mobile No. +919717495000) a former Judge of this Court as an Arbitrator on behalf of the NHAI. The two Arbitrators will now meet to appoint the third Arbitrator within a period of four weeks from today. The AT will fix its own terms and will proceed in accordance with the Arbitration and Conciliation Act, 1996

as amended in 2015.

7. The petition is disposed of in the above terms. A certified copy of this order be delivered to Ms. Mridul and Justice Shali forthwith.

8. Order *dasti*.

S. MURALIDHAR, J

OCTOBER 04, 2016
dn