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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **O.M.P. (T) (COMM.) 69/2016**

CCCL-SAM JV

..... Petitioner

Through: Mr. Mohan Parasaran, Senior Advocate
with Mr. M.P. Parthiban, Mr.S. Karthikei Balan,
Mr. Zoheb Hossain, Advocates.

versus

RAIL VIKAS NIGAM LIMITED

..... Respondent

Through: Mr. Anil Seth, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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07.12.2016

1. The present petition has been filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ('Act') seeking the termination of the mandate of the Arbitral Tribunal ('AT').

2. The disputes between the parties arose out of the contract for execution of design and construction of PSC viaduct, embankment and station including E&M works in connection with extension of metro railway line Noapara (excluding) Baranagar Dakshineswar of Kolkata Metro, which was awarded to the Petitioner by a Letter of Acceptance dated 4th February 2011 and the agreement dated 14th May 2011.

3. In terms of the arbitration clause in the agreement, a three member AT comprising Mr. R.K. Aggarwal (Principal Chief Engineer, Northern Railway), presiding arbitrator, Mr. Shivaji Rakshit (Ex-Secretary/Railway Board) and Mr. Pramod Kumar Jain (Group General Manager/Design Rail Vikas Nigam Ltd.) was constituted.

4. As per the affidavit filed by the Respondent, it appears that seven hearings took place between 5th June 2015 to 5th November 2015 on which dates the Petitioner was stated to have made detailed arguments. Thereafter no hearing took place for one reason or the other. The three dates fixed by the AT in 2016 i.e., 25th May 2016, 10th September 2016 and 12th November 2016, were cancelled due to non-availability of either a member of the AT or the counsel for the Respondent/Petitioner. The site visits which were fixed also could not take place for some reason.

5. The Petitioner has filed the present petition with the grievance that the AT is unable to perform its functions and has failed to act “without undue delay” and therefore in terms of Section 14(1) (a) of the Act, its mandate should be terminated.

6. Learned counsel for the Respondent, on the other hand, points out that in the initial phase the hearings were regularly conducted but could not take place in 2016 for the reasons explained. He assures the Court that with the cooperation of both the parties, if a time bound direction is issued for the expeditious disposal of the entire arbitration case, it will be duly complied with.

7. Having considered the submissions of learned counsel for the parties, the Court issues the following directions.

(i) The postponed site visit which was agreed to between the parties will now take place on 21st December 2016 at Kolkata. It is made clear that there will be no postponement of the site inspection irrespective of whether one or other counsel for either party is unavailable. The AT must ensure that the site visit takes place as directed by the Court.

(ii) The AT will proceed with the hearings immediately thereafter. The next date of hearing in the arbitral proceedings is peremptorily fixed as 2nd January 2017 at 4 pm. If for any reason the said date is not convenient to any member of the AT, then the alternative date, not earlier or later than one week from the said date, will be communicated to the parties by the AT at least ten days in advance. Neither party shall take adjournment on that date.

(iii) The gap between the subsequent dates will not be more than two weeks. Again, no unnecessary adjournments shall be granted to either of the parties by the AT.

(iv) By strictly adhering to the above time schedule, the AT shall endeavour to conclude the arbitral proceedings on or before 30th June 2017 and pronounce the final Award not later than 30th September 2017.

8. If the above time schedule is not adhered to, it will be open to the Petitioner or the Respondent, as the case may be, to approach the Court for directions.

9. The petition is disposed of in the above terms.

S. MURALIDHAR, J

DECEMBER 07, 2016
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