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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 27/2017**
RAKESH KUMAR & CO. Petitioner

Through: Mr S. W. Haider and Mr Ajeet K.
Patel, Advocates.

versus

UNION OF INDIA Respondent
Through: Mr Ashok Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **05.05.2017**

1. The petitioner has filed the present petition under Sections 14 & 15 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the mandate of the arbitral tribunal be declared as terminated and an arbitrator be substituted in its place.
2. The petitioner was awarded the work of "*Construction of Road Over Bridge No.114, 106, 58 and 34 with PSC Girder and slab, PSC slab of bridge No.111, dismantling of existing ROB No.114, 106, 58 and 34 and protection work of Bridge No.43 and allied work such as Approach Road, Breast wall, Side drain, Catch Water Drain, erection of PSC slab over various bridges and cutting in formation near the ROB and any protection work between Hira Nagar-Kathua in connection with Jalandhar-Pathankot-Jammu Tawi Doubling*" and an agreement dated 31.07.2009 (hereafter 'the contract') was entered into between the parties. Certain disputes arose in connection with the

contract and the petitioner invoked the arbitration clause by a letter dated 27.05.2011.

3. The request of the petitioner for appointment of the arbitral tribunal was rejected as the respondent claimed that the disputes fell within the scope of excepted matters and were not referable to arbitration. In the circumstances, the petitioner was constrained to file an application under Section 11 of the Act (*Rakesh Kumar & Co. v. Union of India: ARB P.173/2012*). The said petition was disposed of by directing the parties to appoint an arbitrator in terms of Clause 64 of the General Conditions of the Contract (hereafter 'GCC'). Pursuant thereto, the arbitral tribunal of three serving members of the respondent was constituted in terms of Clause 64 of the GCC.

4. Before the arbitral tribunal, the petitioner filed the statement of claims and the respondent filed its statement of defence. The petitioner claims that the present petition is at the stage of pleadings and recording of evidence has not yet commenced. It is further stated that the last sitting of the arbitral tribunal was held on 16.10.2015.

5. The learned counsel for the respondent states that the hearings were concluded as no evidence was required to be recorded. He, however, does not dispute that the arbitral tribunal was last convened on 16.10.2015 and no communication was received from the arbitral tribunal thereafter. He further states that he has instructions that the award is at the stage of being made and the arbitral tribunal would announce the same shortly.

6. Without going into the question whether the arbitration proceedings

were at the stage of pleadings or were reserved for making the award, there is considerable merit in the petitioner's contention that the mandate of the arbitral tribunal stands terminated as the arbitral tribunal has failed to deliver award within a reasonable period of time. It is seen that more than one and a half years have passed since the last hearing and there has been no communication from the arbitral tribunal. It is also relevant to note that the arbitral tribunal is constituted by three serving members who are now posted at different locations.

7. In terms of Section 14(1)(a) of the Act, the mandate of the arbitral tribunal shall be terminated if the tribunal fails to '*act without undue delay*'. In the present case, the fact that the matter has been delayed is beyond any pale of doubt. Thus, this Court is satisfied that the mandate of the arbitral tribunal stands terminated.

8. At this stage, the learned counsel for the parties state on instructions that instead of an arbitral tribunal of three members, a sole arbitrator may be appointed to adjudicate the disputes between the parties. The learned counsel for the respondent further requests that a retired officer, who has had some experience with the Railways, be appointed as the sole arbitrator.

9. Accordingly, I.P.S Anand, General Manager Indian Railways (Retd.) (Mobile No. 9811841411) is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

10. With the consent of the parties, it is directed that the arbitration shall be

held under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules. The parties shall appear before the Co-ordinator, DIAC On 17.05.2017 at 11:00 AM.

11. The petition stands disposed of.
12. Order *dasti* under signatures of the Court Master.

MAY 05, 2017
MK

VIBHU BAKHRU, J