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

+ **ARB.P. 302/2017**

**NCC - VEE (JV) THROUGH NAGARJUNA CONSTRUCTION
COMPANY LIMITED & VIL LIMITED & ANR. Petitioners**

Through **Mr. T K Ganju, Sr. Advocate with
Mr. Manish Dembla and Ms. Ankita
Rai, Advocates**

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent

Through **Mr. Manish K Bishnoi, Advocate**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **08.05.2017**

IA No. 5652/2017

Allowed, subject to all just exceptions.

ARB.P. 302/2017

1. The petitioners have filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 *inter alia* praying that the presiding arbitrator be appointed.
2. Mr. Ganju, learned Senior Advocate appearing on behalf of the petitioners states that earlier an arbitral tribunal was constituted, but the presiding arbitrator, Lt. Gen. M.S Gosain (Retd.), has resigned on 19.09.2015 and the arbitrators appointed by the respective parties have not been able to concur on appointment of the presiding arbitrator in place of Lt. Gen M.S Gosain (Retd.). He further states that in terms of the arbitration clause, Indian Roads Congress (IRC) is required to appoint the presiding arbitrator. It is further stated that although a letter was written to IRC in this regard, IRC has also failed to appoint the presiding arbitrator.

3. Mr Bishnoi, the learned counsel appearing for the respondent has stoutly opposed the present petition. His twofold contentions are as under:

3.1 First, he contends that the present petition is not maintainable as the 'Statement of Truth' as annexed along with the petition does not comply with provisions of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. He submits that the petitioners have not produced all records in their possession and have suppressed relevant documents. Further, the "Statement of Truth" is not in conformity with Appendix to The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 inasmuch as it does not specifically state that *"I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody"*. He further states that on 24.04.2017, NHAH had written to IRC along with the necessary details and information in prescribed format for appointment of the presiding arbitrator. This letter was marked to the petitioners and was received by the petitioners but has been deliberately suppressed by the petitioners.

3.2 Second, Mr Bishnoi contends that the petitioners have not invoked the mechanism under the arbitration clause and have not approached the IRC for appointment of the presiding arbitrator. It is emphatically argued that not a single communication has been sent by the petitioners to the IRC in this regard and, therefore, the present petition is not maintainable

4. There is much merit in the contentions advanced on behalf of the respondent. In the first instance, the Statement of Truth supporting the present petition is not compliant with First Schedule, Order VI Rule 15A of the Code of Civil Procedure, 1908 and the petition is liable to be rejected on this ground alone. More importantly, the petitioners have suppressed the letter dated 24.04.2017 sent by the respondent.

5. Secondly, the petitioners have not invoked the arbitration clause in as much as they have not called upon the IRC for appointment of the presiding arbitrator. Thus, there is no occasion for the petitioners to have filed the present petition.

6. Mr Bishnoi has handed over a letter dated 24.04.2017 addressed to IRC requesting for appointment of the presiding arbitrator, therefore, IRC ought to have been given sufficient time to appoint the presiding arbitrator.

7. In view of the above, the present petition is dismissed with costs quantified at ₹10,000/-.

8. Needless to mention that the petitioners would also have liberty to approach IRC for appointment of the presiding arbitrator, if required.

VIBHU BAKHRU, J

MAY 08, 2017

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