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

+ O.M.P. (COMM) 299/2017

NATIONAL HIGHWAYS INFRASTRUCTURE &
DEVELOPMENT CORPORATION LTD. (NHIDCL).... Petitioner

Through Mr.Rajiv Bansal, Sr.Adv. with
Ms.Sadiqua Fatma, Ms.Vasudha
Trivedi, Mr.Sagar Mittal & Mr.Akash
Singh, Advocates

versus

GAMMON INDIA LTD. - SPSCPL (JV) Respondent

Through Mr.Saurabh Suman Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **31.08.2017**

I.A.No.9145/2017 (*condonation of delay*)

This application is filed under Section 5 of the Limitation Act seeking condonation of delay of 8 days in filing the accompanying petition. For the reasons stated in the application, the same is allowed and the delay of 8 days in filing the accompanying petition is condoned.

O.M.P. (COMM) 299/2017 & I.A.No.9144/2017 (*stay*)

1. This petition is filed under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking to *set aside* the order/award dated 09.06.2017 of the arbitral tribunal.
2. Some of the relevant facts are that a Contract Agreement was executed between the parties on 14.11.2014. Disputes having arisen between the parties, an arbitral tribunal was constituted. The arbitral tribunal on the hearing that took place on 09.06.2017 noted as follows:

“3.0 As regards last para No.15 of amended SOD, AT pointed out that the respondent's request to allow the claim of respondent for financial loss occurred due to slippage to achieve project milestone etc. cannot be accepted/agreed by AT as the respondent has not submitted counter claims with SOD and after completion of 10 hearings such request cannot be considered.”

3. Hence, the grievance of the petitioner is that the counter claim of the petitioner was rejected by the arbitral tribunal at the threshold without giving any hearing to the petitioner on the counter claim.
4. The learned counsel for the respondent very fairly submits that he has no objection in case a separate arbitral tribunal is constituted for adjudication of the counter claim of the petitioner.
5. It is agreed between the parties that each of the party would nominate a technical person as his nominee to be appointed as an arbitrator within 30 days from today and this court may appoint the third arbitrator/presiding arbitrator who would be a retired Judge of this court.
6. Accordingly, I appoint Mr. Justice J.K. Mehra (Retd.) (Mobile No. 9810525650) as the third arbitrator/presiding arbitrator to adjudicate the counter claim of the petitioner. The arbitral tribunal shall fix his fees after consultation with the learned counsel for the parties.
7. The order dated 11.08.2017 giving certain directions to the parties stands vacated.
8. Petition stands disposed of. All the pending applications, if any, also stand disposed of.

JAYANT NATH, J.

AUGUST 31, 2017/v