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

+ **ARB.P. 581/2018**

HINDUSTAN CONSTRUCTION COMPANY LTD. Petitioner

Through: **Mr.Rishi Agrawal, Mr.Karan Luthra
and Ms.Shruti Arora, Advs.**

versus

IRCON INTERNATIONAL LTD. Respondent

Through: **Mr.Tejas Karia, Mr.Gauhar Mirza,
Mr.Mohit Oommen, Mr.Surya Karan
Sambyal, Ms.Vrinda Pareek,
Mr.Prakhardeep, Advs.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **25.09.2018**

IA 12745/2018 (Delay)

This is an application seeking condonation of delay in filing of the reply to the petition.

For the reason stated in the application, the delay is condoned and application stands allowed.

ARB.P. 581/2018

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of the Arbitral Tribunal to adjudicate the disputes that have arisen between the parties in relation to the railway link project work in the State of Jammu & Kashmir titled as the "Rail Link Project – Dharam Quazigund Section for construction of Tunnel-48 (between Km 100.00 to Km 110.200 approx.) on Dharam-Quazigund Section of Udhampur-Srinagar- Baramulla New BG Railway Line Project (Package T-48)" awarded in favour of the petitioner by the respondent vide Letter of

Acceptance dated 06.09.2012.

2. The parties have also executed a formal Agreement on 26.11.2012. The Agreement contains an Arbitration Agreement in form of Clause 60.3 of the Special Condition of Contracts.

3. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 24.04.2018. The respondent, vide its letter dated 22.05.2018 forwarded four names from its panel of Arbitrators calling upon the petitioner to suggest two names from the named four member panel within ten days from the receipt of the letter for appointment of petitioner's Arbitrator. By a subsequent letter dated 22.06.2018, the respondent rejected the representation of the petitioner against the list of retired officers suggested by the respondent, relying upon the judgment of Supreme Court in ***Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Limited***, (2017) 4 SCC 665 and reiterated that the petitioner should suggest two names from the panel of four names given by the respondent to the petitioner. The petitioner therefore filed the present petition.

4. This Court in ***Bernard Ingenieure ZT-GMBH v. Ircon International Ltd.***, 2018 SCC OnLine Del 7941 has held that though the judgment of the Supreme Court in ***Voestalpine Schienen GMBH*** (supra) was passed as far back as 10th February, 2017, the respondent has failed to broad base its panel of Arbitrators as it still does not contain names of Engineers of prominence and high repute from private sector, persons with legal background like Judges and lawyers of repute, people having knowledge and expertise in accountancy etc.

5. Learned counsel for the respondent during the course of arguments

has handed over a list of panel of Arbitrators prepared by the respondent. I have perused the same and in my opinion, it still suffers from the same deficiency.

6. In view of the above, as the respondent has failed to prepare a broadbased panel in terms of the judgment of the Supreme Court in ***Voestalpine Schienen GMBH*** (supra) and offer the same to the petitioner for selection of its nominee, the respondent has failed to discharge the function entrusted on it in terms of the Arbitration Agreement.

7. In view of the above and with the consent of the learned counsel appearing for the petitioner, I appoint **Mr.Suresh Kumar**, Ex-Director, Finance, CONCOR (Serial No.11 of the list in T-48 package) as a nominee Arbitrator of the petitioner.

8. Learned counsel for the respondent submits that the respondent has nominated Mr.Bhuvesh P Khara, GM/DLW (Retd.) (R- 1402, Metrozone, Anna Nagar, Chennai-600040, Mob. No.7042300388) as its nominee Arbitrator.

9. To complete the constitution of the Arbitral Tribunal, I appoint **Mr.Justice Badar Durrez Ahmad**, Retired Chief Justice of Jammu & Kashmir High Court (14, Friends Colony (West), Mathura Road, New Delhi-110065, Mob.7042205786) as the Presiding Arbitrator.

10. The Arbitrators so appointed shall give their disclosure under Section 12 of the Act before proceeding with the reference.

11. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

SEPTEMBER 25, 2018/Arya