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

+ ARB.P. 593/2018

+ OMP(I)(COMM) 169/2018 & I.A. Nos.5581/2018, 9612/2018,
9615/2018

SOWIL LIMITED

..... Petitioner

Through: Ms.Manmeet Arora, Ms.Samapika
Biswal and Ms.Pavitra Kaur, Advs.

versus

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED

..... Respondent

Through: Ms.Soumya Priyadarshini, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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30.10.2018

1. The petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 28.10.2014 executed between the parties, whereunder the respondent has awarded the work of conducting Traffic Surveys on National Highways in Zone- 5 (in the States of Odhisha ,West Bengal and North-Eastern States) using Portable Automatic Traffic Counter & Classifier (ATCC) Systems to the petitioner.
2. The petition under Section 9 of the Act has been filed by the petitioner *inter-alia* praying for restraint on the respondent for accepting any bids pursuant to its fresh tender for the same work and for the same zone

that the petitioner has been in charge of under the contract.

3. This Court by an Interim Order dated 19.04.2018 had restrained the respondent from terminating the Agreement dated 28.10.2014, however, clarifying that the same shall not preclude the respondent from proceeding with the tender.

4. Further, by an order dated 24.04.2018 it was directed that the respondent may continue with the tender process, however, it would not award contracts to any third party without seeking leave of this Court with respect to the locations that have been awarded in favour of the petitioner under the contract and on which the petitioner was lastly performing the work.

5. During the pendency of the present petitions, the parties had met to discuss the possibility of an amicable settlement. In the said meeting the respondent had offered the petitioner to conduct the balance traffic survey as per the rates quoted by L-1 Agency in the fresh tender. Though at that stage the petitioner had refused to accept the said proposal, counsel for the petitioner submits that the petitioner is agreeable to the said proposal and to conduct the balance traffic survey as per the rates quoted by L-1 Agency in the new tender, subject, however, to the claim of the petitioner being adjudicated by the Arbitral Tribunal appointed by this Court. To make it clear, counsel for the petitioner submits that during the pendency of the arbitration proceedings the petitioner shall continue to work under the contract as per L-1 rates quoted in the new tender and raise a claim for the difference between L-1 rates and the contractual amount before the Arbitrator.

6. Counsel for the respondent has also taken instructions on this proposal and is agreeable to the same.

7. In view of the above, Interim Orders dated 19.04.2018 and 24.04.2018 are modified and it is directed that the petitioner shall continue to work on the sites that were already allocated to it in terms of the contract between the parties, however, shall be paid in accordance with L-1 rates that have been received by the respondent in the new tender process. The petitioner shall be entitled to raise the claim of the differential amount and such other claims that it may have before the Arbitrator. For the remaining sites the respondent shall be free to allot those sites to any third party.

8. To expedite the arbitration proceedings and as the Arbitration Agreement has not been denied by the respondent, I propose to appoint an Arbitrator for adjudicating such claims and disputes of the parties. I may note that the counsel for the respondent has submitted that the invocation of the arbitration by the petitioner and the present petition would be pre-mature as the same have not been made in accordance with the Arbitration Agreement that is following the mutual discussion and conciliation. In my view as the mutual settlement process has failed and the parties have not arrived at a settlement on appointment of an Arbitrator, calling upon the petitioner now to file a fresh petition under Section 11 of the Act would only be seeking a formality to be completed.

9. I therefore appoint **Justice Badar Durrez Ahmad**, Retired Chief Justice of the Jammu and Kashmir High Court (14, Friends Colony (West), New Delhi-110065, Mobile No.9910615334) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The Arbitrator shall give disclosure under Section 12 of the Act before

proceeding with the reference.

10. The parties shall be free to file an application seeking modification/variation/vacation of the Interim Orders passed by this Court before the Arbitrator. The Arbitrator shall adjudicate the disputes and such applications, if filed, remaining uninfluenced by any observation made by this Court in the previous orders or in the order passed today.

11. The petitions alongwith pending applications are disposed of with the above directions, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

OCTOBER 30, 2018/Arya