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

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Date of decision: 16.09.2019

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ARB.P. 520/2019

KRISHNAGIRI WALLAJAHPET

TOLLWAY LTD.

..... Petitioner

Through: Ms. Shweta Bharti, Advocate

versus

NATIONAL HIGHWAYS AUTHORITY OF

INDIA

..... Respondent

Through: Ms. Aanchal Seth, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition filed under Section 11(6) (b) & (c) of the Arbitration and Conciliation Act, 1996 ('Act') for appointment of the Presiding Arbitrator for adjudication of the disputes between the parties.

2. The petitioner and the respondent entered into a concession agreement dated 13.05.2010 for execution of a project and during the concession period, the petitioner was obliged to construct, operate and maintain the project highway. Article 44 for the agreement provided for Dispute Resolution.

3. By a subsequent Supplementary Agreement dated 08.02.2017, clause 44.3 of Article 44 of the agreement was amended, in terms of which any dispute between the parties was to be finally settled by arbitration in accordance with the Act. By this agreement, the parties

had agreed that the Arbitral Tribunal shall comprise of three Arbitrators, one each to be appointed by the parties and the third Arbitrator to be appointed by the two Arbitrators, and he shall act as Presiding Arbitrator. The parties have also mutually agreed to fix the fee and other expenses payable to the Arbitrators as per the Schedule enclosed with the Supplementary Agreement.

4. The Arbitration Clause 44.3 reads as under:

“44.3 Arbitration

Any dispute, which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by Authority and the Concessionaire. The third arbitrator shall be chosen by the two arbitrators so appointed by the Parties and shall act as presiding arbitrator. In the case of failure of the two arbitrators, appointed by the parties to reach a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently the presiding arbitrator shall be appointed in accordance with the Arbitration & Conciliation Act, 1996.*
- (ii) Neither party shall be limited to the proceedings before such Tribunal to the evidence or arguments before the other party/independent consultant.*
- (iii) Arbitration may be commenced during or after the Concession period, provided that the obligations of the authority and the Concessionaire shall not be altered by reason of the arbitration being*

conducted during or after the Concession Period.

- (iv) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (i) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party then the appointment of such arbitrator shall be made in accordance with the Arbitration & Conciliation Act, 1996.*
- (v) Arbitration proceedings shall be held at New Delhi, India and the language of arbitration proceedings and that of all documents and communications between the parties shall be English.*
- (vi) The arbitrators shall make a reasoned Award and the Award shall be final and binding upon both parties. The expenses on Arbitration process will be mutually shared between the parties to the arbitration.*
- (vii) The parties have mutually agreed to accept and follow the fee and other expenses payable to the Arbitrator(s) as per the Schedule enclosed herein.”*

5. It is submitted by the learned counsel for the petitioner that disputes having arisen between the parties, the Arbitration Clause was invoked. Finally, after some negotiations, the petitioner has nominated Mr. R.L. Koul, as its nominee Arbitrator. The respondent was called upon to appoint its nominee Arbitrator and the respondent vide its letter dated 18.06.2019 appointed Mr. Shashikant Sharma as its nominee Arbitrator.

6. It is further submitted that the two nominated Arbitrators have not been able to reach a consensus on the appointment of the third

Arbitrator, who shall act as the Presiding Arbitrator. In these circumstances, the present petition has been filed.

7. Ms. Anchal Seth, Advocate enters appearance on behalf of the respondent and does not dispute the above contentions and submissions of the learned counsel for the petitioner.

8. The present petition has been filed with the following prayers:

- “a) Appoint a retired Judge of this Hon'ble Court as the Presiding Arbitrator to adjudicate upon the disputes and differences between the parties arising from the Concession Agreement dated 13.05.2010 as amended by Supplementary Agreement dated 08.02.2017; and*
- b) Pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the interest of justice.”*

9. Learned counsels for the parties jointly submit that a retired Judge of this Court be appointed as a third Arbitrator to act as a Presiding Arbitrator.

10. As the parties have already nominated their respective Arbitrators, I see no impediment in appointing a third Arbitrator.

11. For the reasons stated in the petition, the same is allowed and **Hon'ble Mr. Justice G.P. Mittal**, Former Judge of this Court is appointed as the third Arbitrator, who shall act as the Presiding Arbitrator. The address and Mobile No. of the learned Arbitrator is as under:

Hon'ble Mr. Justice G.P. Mittal (Retd.)
H-37, Green Park Extension,
New Delhi-110016
Mobile No. 9910384619

12. The fee schedule of the learned Arbitrator will be as per the terms of the Supplementary Agreement entered into between the parties. The Arbitrator shall give disclosure in terms of Section 12 of the Act before proceeding with the reference.

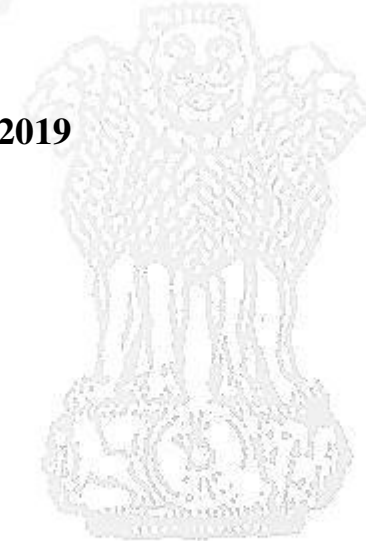
13. Registry will dispatch a copy of the order passed today to the learned Arbitrator.

14. The petition is allowed in the above terms with no order as to costs.

SEPTEMBER 16, 2019

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JYOTI SINGH, J



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