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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 347 OF 2019**

ARSS Infrastructure Projects Ltd	...Applicant
<i>Versus</i>	
General Manager, Central Railway	...Respondent

Mr Prabhakar M Jadhav, *for the Applicant.*
Mr TJ Pandian, *for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 20th January 2020

PC:-

1. Between them the parties had an agreement dated 5th March 2010 for construction of a major bridge on the Amba River and for another bridge on the NGTN-Roha road in the Panvel-Pen doubling project. Disputes and differences have arisen between these.

2. The contract in clause 64 has an arbitration clause. However, the reference to arbitration is limited to those where the claim is less than or equal to 20% of the contract value. That contract value in the present case is Rs. 6 crores.

3. On written instructions received on email, the learned Advocate for the Applicant states that his clients will restrict its

claim to this limit, i.e. 20% of the project value and not press any additional claim.

4. Having regard to the nature of the arbitration clause, and since Mr Pandian has provided the name of five retired railway officers with suitable qualifications, and the Applicant is willing to accept any of them, I will appoint a three-Member Tribunal consisting of Mr Sudhir Kumar, retired CCRS, IRSE; Mr DG Diwate, retired PCE/SW Rly, IRSE; and ***Mr MS Sharma, retired CME/NW Rly, IRSE*** to decide the disputes and differences between the parties arising from the contract in question. The contact details will be provided by Mr Pandian to the Respondent.

- (a) **Appointment of Arbitrators:** By consent, Mr Sudhir Kumar, retired CCRS, IRSE; Mr DG Diwate, retired PCE/SW Rly, IRSE; and ***Mr MS Sharma, retired CME/NW Rly, IRSE***, are hereby nominated to act as Arbitrators to decide the disputes and differences between the parties under an agreement dated 5th March 2010 for construction of a major bridge on the Amba River and for another bridge on the NGTN-Roha road in the Panvel-Pen doubling project. The most senior of the three will be the Presiding Arbitrator.
- (b) **Communication to Arbitrators of this order:** A copy of this order will be communicated to the arbitral tribunal by the Advocates for the Applicant within one week from the date this order is uploaded.

- (c) **Disclosure:** The three Arbitrators are requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrators:** Parties will appear before the Arbitrators on such date and at such place as the Arbitrators nominate to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the Arbitrators within one week of this order being uploaded. The information is to include a valid and functional email address.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:** Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section

17 of the Arbitration & Conciliation Act, 1996 before the Arbitrators. Any such application will be decided in such manner and within such time as the Arbitrators deems fit.

- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrators will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the Arbitrators find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

5. The Application is disposed of in these terms. No costs.

(G. S. PATEL, J)

Note: This order is modified by an order dated 6th March 2020 passed on a praecipe for speaking to the minutes. Corrections are shown in bold and italics.