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

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Date of Decision: 23.07.2020

+ ARB P. 32/2020

NKB INFRASTRUCTURE PVT. LTD.Petitioner
Through: Mr. Arun Khatri, Advocate

versus

NORTHERN RAILWAYRespondent
Through: Mr. Amitava Poddar, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

Hearing has been conducted through Video Conferencing.

1. Present petition has been filed under Section 11(6) read with Section 11(10) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Petition relates to an Agreement between the parties dated 18.07.2014. Certain disputes having arisen between the parties with respect to the said Agreement, Petitioner had sent a notice to the Respondent dated 22.11.2019 invoking Arbitration in terms of Clause 64 of the General Conditions of Contract (hereinafter referred to as 'GCC'). Receiving no response towards appointment of the Arbitrator, present petition was filed. The matter was adjourned on the last date of hearing

to enable Learned Counsel for Petitioner to go through the judgement of the Supreme Court in ***Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV) A Joint Venture Company, 2019 SCC OnLine SC 1635***, wherein the Supreme Court has upheld the power of the Railways to appoint an Arbitral Tribunal in terms of Clause 64 of the GCC, which envisages the appointment through a panel of officers.

3. Learned Counsel for the Petitioner having perused the judgement very fairly and candidly submits that he has no objection if the Arbitral Tribunal was to be constituted as per the procedure laid down under the provisions of Clause 64(3)(a)(ii) of the GCC.

4. Mr. Amitava Poddar, Learned Counsel for Respondent submits that since Petitioner is agreeable to the appointment of Arbitral Tribunal by the Railways in terms of Clause 64(3)(a)(ii) of the GCC, he does not oppose the petition.

5. Relevant portion of Arbitration Clause 64 GCC, which provides for appointment of an Arbitral Tribunal, reads as under:

“64.(3) Appointment of Arbitrator:(a)(ii) In cases not covered by the clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empaneled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at

least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch. of the request by Railway. The General Manager shall appoint at least one out them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM. shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officers of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator."

6. With the consent of the parties, following directions are passed :
- (i). Respondent shall send a panel of 3 Officers, which shall include a retired Officer, in terms of Clause 64(3)(a)(ii) of GCC, within a period of 30 days from today to the Petitioner.
 - (ii). Petitioner shall suggest two names as his nominees to the General Manager, from the suggested names, and shall communicate the same to the Respondent, within 30 days from the date of receipt of the names.
 - (iii). General Manager shall thereafter appoint at least one Arbitrator from the names so suggested, as Petitioner's nominee and shall simultaneously appoint

the balance 2 Arbitrators duly indicating the 'Presiding Arbitrator' from amongst the 3 Arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Petitioner's nominees.

7. At this stage, Learned Counsel for the Petitioner submits that in the Notice invoking Arbitration, he has suggested the name of one Mr. R.P. Gupta who is the Ex-Chief Engineer, Indian Railways. He prays that the Respondent be directed to take into consideration the name of the said Officer while constituting the Tribunal.

8. It is open to the Respondent to take into consideration the request made by the Petitioner.

9. Petition is disposed of in the above terms.

JYOTI SINGH, J

JULY 23, 2020

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