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

% ***Date of decision: 24.09.2021***

+ **ARB.P. 858/2021**

M/S K.S. JAINPetitioner

Through: Mr. S.W.Haider, Advocate

Versus

UNION OF INDIARespondent

Through: Mr. Jagjit Singh, Senior Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. The relief sought in the present petition before this Court is to appointed sole Arbitrator to under Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate the dispute with respondent.

2. According to petitioner, pursuant to tender rates dated 05.12.2012 submitted by the it with the respondent, the work for linking of BG Track & Turnouts, provision of glued joint, SEJ's, dismantling of existing track & turnouts, handling, lifting, loading, unloading and spreading of ballast, leading of P. Way materials and other misc. works in Motichur, Raiwala,

Harrawala yard & shunting neck, extension in Dehradun yards in connection with development of facilities for running 18 coach trains between Hardwar-Dehradun section of Moradabad Division was awarded to the petitioner vide respondent's acceptance letter bearing No.74-N/4/1/Misc./WNMB dated 08.02.2013. The time period for completion of work was 11 months ending on 07.01.2014.

3. Petitioner claims that all arrangements for execution of the work were made by petitioner, however, due to substantial increase in the scope of work, late decisions, non-availability of site & P-way materials and for other reasons attributable to the departments of respondent, the work could be finally concluded on 31.12.2017. Petitioner alleges that after completion of work, its request to respondent for preparation and payment of final bills, has remained unattended for one reason or another. Petitioner complains that respondent did not even release the security deposit. However, after much anticipation the final bill was prepared by the respondent on 30.08.2018, wherein several items were left out for payment. Since all attempts to clear its dues against the respondent failed, petitioner vide its letter dated 26.07.2021 invoked the arbitration clause as contained in Para-64 of the General Conditions of Contract (GCC). In reply to the aforesaid

letter, respondent vide its letter dated 16.08.2021 asked for waiver under section 12(5) of Arbitration and Conciliation Act, 1996.

4. At the hearing, learned counsel for petitioner submits that petitioner has already invoked arbitration vide notice dated 26.07.2021 and for claim of Rs.61,96,000/- (Rupees Sixty-One Lac Ninety-Six Thousand), an Arbitrator is required to be appointed by this Court.

5. On the last date of hearing, time was sought on behalf of respondent to obtain instructions and assist this Court. Today, learned Senior Standing Counsel for respondent pleads instructions are still awaited.

6. Pertinently, allocation of work order vide respondent's acceptance letter bearing No.74-\N/4/1/Misc./WNMB dated 08.02.2013 and invocation of arbitration by petitioner vide notice dated 26.07.2021 is not disputed.

7. Accordingly, Mr. Pramod B. Agarwala, Advocate (**Mobile:9999105066**) is appointed sole Arbitrator to adjudicate the disputes between the parties.

8. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi

International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The present petition is accordingly disposed of.

10. A copy of this order be sent to the learned Arbitrator for information.

SEPTEMBER 24, 2021

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**(SURESH KUMAR KAIT)
JUDGE**

