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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% Judgment delivered on: 12th May, 2022+ **ARB.P. 822/2021**

THE SOUTH INDIAN BANK LTD Petitioner

versus

TRANSSTROY DINDIGUL - THENI - KUMILI
TOLLWAYS PVT. LTD. & ANR. Respondent**Advocates who appeared in this case:**

For the Petitioner: Mr. Sujoy Kumar, Mr. Pradyuman and Mr. K.V. Singh, Advocates

For the Respondent: Mr. Arun Varma, Senior, Advocate with Mr. Suvir Sharma and Mr. Prakhar Khanna, Advocates for respondent No.2.

**CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA****JUDGMENT****SANJEEV SACHDEVA, J**

1. Petitioner seeks appointment of a nominee Arbitrator on behalf of respondent No.1 so that the three member Arbitral Tribunal could be constituted.

2. It is constituted that the subject disputes arise out of an escrow agreement dated 04.05.2011 and substitution agreement dated



31.05.2013.

3. It is further contended that the petitioner as well as respondent No.2 have already appointed their nominee Arbitrators and respondent No.1 has failed to appoint nominee Arbitrator despite being so requested by the petitioner.

4. It is contended that petitioner has appointed Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court as their nominee Arbitrator and respondent No.2 has appointed Mr. Justice Badar Durrez Ahmed, former Chief Justice of Jammu and Kashmir High Court as their nominee arbitrator.

5. Learned senior counsel for respondent No.2 submits that though respondent No.2 has appointed the nominee Arbitrator, it appears that the disputes being raised are subject matter of a concessionaire agreement dated 12.07.2010 and do not arise out of the above referred escrow agreement and substitution agreement.

6. He, however, without prejudice submits that in case the right of the said respondent is reserved to raise the said issue before the Arbitral Tribunal, he would have no objection to appointment of the third Arbitrator.

7. Learned counsel for parties submit that in similar circumstances



where similar disputes arose, an Arbitral Tribunal has been constituted comprising of Mr. Justice Mukul Mudgal, former Chief Justice of Punjab and Haryana High Court, Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court and Mr. Justice Badar Durrez Ahmed, former Chief Justice of Jammu and Kashmir High Court.

8. On 13.09.2021, advocate/Official Liquidator of parent company of respondent No.1 had entered appearance and had sought time to take instructions with regard to its nominee Arbitrator. Thereafter, the petition was listed on 06.10.2021, 15.11.2021, 27.01.2022, 21.03.2022 and today. None has appeared for respondent No.1.
9. In view of the above and without prejudice to the rights and contentions of the parties, Mr. Justice Mukul Mudgal, former Chief Justice of Punjab and Haryana High Court is appointed as the third Arbitrator.
10. It is clarified that all disputes and objections being raised by respondent No.2 are left open and would be adjudicated by the Arbitral Tribunal, if so raised before it.
11. Petition is accordingly disposed of in the above terms.

MAY 12, 2022/NA

SANJEEV SACHDEVA, J

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