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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th May, 2023
Pronounced on: 03th July, 2023

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ARB.P. 1460/2022
ANJ VC JV

..... Petitioner

Through: Mr.Uditmanktala, Mr.Jatin Kumar,
 Mr.Mohit Sharma, Mr.Kritik,
 Mrs.Reshma Rizvi, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Respondent

Through: Ms.Qurratulain, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA
YOGESH KHANNA, J.

1. This order be read in consonance of order dated 21.04.2023. This petition is filed for appointment of a sole arbitrator. The learned counsel for the respondent submits as per law laid down in *NTPC Ltd. vs. SPML Infra Ltd.* 2023 SCC OnLine SC 389, this Court while appointing an arbitrator may consider *if* the claim ex facie is time barred or dead or there exist no subsisting dispute then instead of referring the matter to arbitrator, the Court may reject the application. Heard.
2. A bare perusal of the judgment would show the standard of scrutiny to examine the non-arbitrability of a claim is only *prima facie* and the referral Court may not undertake a full review of the contested facts.
3. The dispute *qua* the debt being time barred is raised only because the claim was not raised in the time allotted to the petitioner under the

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contract for submitting its claim. Vide a letter dated 22.12.2021 the respondent had required the petitioner to submit its claim within *three* days from the date of issuance of said letter. Another letter dated 28.12.2021 of the respondent says since the claim was not made within *three* days, the claim, if made, henceforth shall not be considered. The claim was however made on 31.12.2021, i.e. 3 days thereafter.

4. The argument of respondent is the debt is time barred only because the claim was not submitted within *three* days *per* letter dated 22.12.2021 of the authority, needs to be rejected, *per* provisions of Limitation Act.

5. Admittedly, the General Conditions of Contract (GCC) has clause 25 *qua* Settlement of Disputes and Arbitration and sub-clause (ii) of clause 25 notes the dispute or differences shall be referred for adjudication through arbitration by a tribunal having sole arbitrator when the tender amount is Rs.100 crores or less. Admittedly the tender amount is less than Rs.100 crores, hence the sole arbitrator needs to be appointed.

6. Admittedly, the arbitration agreement is not in dispute and so is its validity, hence in the circumstances, the petition is allowed and Mr.Justice Talwant Singh (Retd.) is hereby appointed as a sole arbitrator to arbitrate the disputes between the parties. The fee of the sole arbitrator be fixed in terms of rules prescribed by Delhi International Arbitration Centre (DIAC).

7. The petition stands disposed of along with pending application(s), if any. A copy of this order be communicated to the sole arbitrator.

YOGESH KHANNA, J.

JULY 03, 2023/du