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

+ **ARB.P. 294/2024**

M/S S.L. ELECTROMECH PVT. LTD. Petitioner
Through: **Mr. Vivekanand and Mr. Abhishek Sanwal, Advocates.**

versus

UNION OF INDIA & ANR. Respondents
Through: **Mr. Amit Gupta, Advocate (SPC), UOI.**

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

% **ORDER**
03.04.2024

1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
2. The petitioner was awarded with the work under the name and style of Electrification works and Power Supply arrangement for Development of additional train handling and terminating facilities in Delhi area at Ghaziabad, Tilak Bridge, Hazrat Nizamuddin, Tuglakabad, Shakurbasti, Subzimandi and Delhi Sarai Rohilla in connection with New Delhi World Class Station vide LOI dated 17.11.2009 and letter of acceptance dated 27.11.2009. The petitioner submitted performance guarantee for Rs.23,84,049/- on 18.12.2009.



Subsequently, a formal agreement was also executed between the parties.

3. The petitioner's case is that prolongation of work beyond the stipulated period of completion of work was due to the delay and default on part of the respondent as notified by the petitioner from time to time.

4. Learned counsel for the petitioner submits that the final bill was raised alongwith losses and damages on account of prolongation of work for more than 12 years and 06 months on 23.02.2022. Since the payment was not made, the petitioner invoked Clause 64 of the GCC for constitution of arbitral tribunal.

5. Learned counsel for the petitioner submits that the bill has not been fully cleared. In the meantime, the petitioner appointed Mr. S. R. Pandey, ADG Works (Retired), CPWD as nominee arbitrator. The respondent no.2 sent panel of four names of arbitrators of Railways who served Railways and the same was objected to by the petitioner. However, the respondent insisted to select two names out of the panel of four names of retired railway officers. The petitioner stated that on 01.12.2023 the petitioner again objected to such panel names of arbitrators and requested to appoint nominee arbitrator. Learned counsel submits that since the respondent failed to appoint the arbitrator, the present petition is filed.

6. Learned counsel appearing for the respondent, on instructions, submits that the answering respondent has no objection to the matter being referred to the Arbitral Tribunal comprising of a Sole Arbitrator.

7. Considering that both the parties have consented to the



reference to the arbitral tribunal, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, DIAC shall nominate an Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

DINESH KUMAR SHARMA, J

APRIL 03, 2024/ssc