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

+ **ARB.P. 505/2022**

SHRI NILKANTH ENTERPRISES Petitioner

Through: Ms. Yoothica Pallavi, Adv.

Versus

**ESSEL AHMEDABAD GODHRA TOLL ROADS LIMITED &
ANR.** Respondent

Through: Ms. Ritwika Nanda and Ms. Shruti
Gupta, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

26.04.2024

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ARB.P. 505/2022

1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The Arbitration Clause is Clause 28 contained in the General Terms and Conditions of Work Order dated 06.05.2019 and reads as under:

“28. Governing Law & Dispute Resolution: The applicable laws of India shall govern the PO with the Supplier/Seller. Any dispute or difference, which may arise out of the PO and cannot be settled in an amicable way between the parties, shall be settled by arbitration in Mumbai/Delhi, as per the provisions the Arbitration and Conciliation Act 1996 and the language of the arbitration shall be English.”

3. Even though Ms. Pallavi, learned counsel for the petitioner states that respondent Nos. 1 and 2 both should not be referred to arbitration, after some arguments, she does not press for arbitration proceedings against the respondent No. 2.

4. Ms. Nanda, learned counsel for the respondent states that she has no



objection as far as the disputes between the petitioner and respondent No. 1 are referred for adjudication to the sole arbitrator.

5. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Saurabh Kansal (Adv.) (Mob. No. 9958378565) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) 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.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

6. As far as the claims against the respondent No. 2 are concerned, the petitioner is at liberty to initiate all appropriate legal actions for recovery of any amounts due and payable against the respondent No. 2 in accordance with law.



7. Granting the said liberty, the petition is allowed and disposed of.

APRIL 26, 2024/NG

JASMEET SINGH, J