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

+ **ARB.P. 447/2024**

M/S NG-TARMAT (JV)

..... Petitioner

Through: Mr. Chinmoy Pradip Sharma, Sr.
Adv. with Mr. Mohit Paul, Ms.
Rangoli Seth, Ms. Sanjleena Lal, Ms.
Pallavi Chatterjee, Mr. Irfan Hasieb &
Mr. Krishnajyoti Deka, Advs. (M:
8744883241)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Vikram Jetly CGSC with Ms
Shreya Jetly Advocate. for UOI. (M:
9811157321)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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21.05.2024

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act') filed by the Petitioner-M/s. NG Tarmat (JV) seeking the constitution of the Arbitral Tribunal in terms of Clause 26.3.2 of the Agreement dated 5th November, 2015.
3. At the outset, ld. Senior Counsel for the Petitioner, submits that he has instructions to delete the Respondent Nos.2 & 3 i.e. State of Goa and Chief Engineer cum Regional Officer, Ministry of Road Transport and Highways from the memo of parties, as the said Agreement has been entered into only between the Petitioner and Respondent No.1-MoRTH. If the parties, at any stage of arbitral proceedings, wish to summon any individual or entity from



the State of Goa as witness(es), parties would be free to approach the arbitral tribunal at the appropriate stage. Let the fresh memo of parties be filed within a week.

4. The brief background of this petition is that the Petitioner was awarded a tender dated 29th June, 2015 for the Construction of Margao Western National Highway Bypass for NH-17 (New NH-66 from Km. 26/ 200(Ch.00/00) to Km. 38/ 100 (ch.11 / 900) in the State of Goa. JOB NO- NH-17-Goa 2014-15-166. The date of completion of the contract was 28th December, 2017.

5. As per the Petitioner, as contained in the letter dated 25th February, 2019, due to various reasons, there had been delay in commencement of the project and even during the pendency of the project. According to the Petitioner, the entire project has been completed, as recorded vide the completion certificate dated 14th November, 2022¹, and the said project was inaugurated on 3rd January, 2022. According to the Petitioner, it is entitled to damages/other monetary compensation due to delays, for which repeated representations have been made. Further, the notice invoking arbitration under Section 21 of the 1996 Act was communicated on 7th April, 2023. However, the same has not been acceded to by the Respondent No. 1/MoRTH. Accordingly, the present petition has been filed seeking the constitution of the Arbitral Tribunal in terms of Clause 26.3.2 of the Agreement dated 5th November, 2015. Ld. Senior Counsel for the Petitioner submits, on instructions, that though the clause contemplates a three member Arbitral Tribunal, the Petitioner, in order to curtail costs, is agreeable for

¹ There is a dispute between the Petitioner and the Respondent as to the actual date of completion certificate – 14.11.2020 or 14.11.2022. This shall be considered by the Arbitral Tribunal



appointment of a Sole Arbitrator in the matter, The arbitration clause reads as follows:

“26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.

26.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.”

6. Vide order dated 4th April, 2024, the State of Goa was deleted from the array of the parties. Notice was also issued to the Respondent No.1.

7. Today, it is submitted by Mr. Sharma, Id. Counsel appearing for the Petitioner, that the Petitioner has nominated its Arbitrator and the Respondent has also appointed its nominee Arbitrator. Accordingly, let both the nominee Arbitrators agree upon the Presiding Arbitrator by 15th June, 2024. If the Presiding Arbitrator is not agreed upon by the parties, the Petitioner is free to move an application to revive this petition.

8. The petition is disposed of in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

MAY 21, 2024/dk/dn