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

+ **ARB.P. 534/2024**

APEX TARMAC PRIVATE LIMITED

.....Petitioner

Through: Mr. Monish Panda, Mr. Parth J.
Contractor, Mr. Gaurav Dabas,
Advocates.

versus

**MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS, GOVERNMENT OF INDIA**

.....Respondent

Through: Mr. Ankur Mittal, Standing
Counsel for UoI with Ms. Ikshita
Parihar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.08.2024

1. The petitioner has approached this Court, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under an Agreement dated 14.08.2020 [“Agreement”].
2. The agreement contains a Dispute Resolution Clause [Clause 26], which provides that, in the event conciliation proceedings are unsuccessful, the disputes will be referred to an Arbitral Tribunal for adjudication. Under Article 27 of the Agreement, Courts in Delhi have been vested with exclusive jurisdiction over matters arising out of or



relating the agreement.

3. Disputes having arisen between the parties, the petitioner invoked arbitration by a letter dated 20.03.2024 and proposed the names of four arbitrators. The respondent's reply dated 27.03.2024 did not dispute the existence of an arbitration clause, but nonetheless resisted the appointment of an arbitrator. Despite further correspondence between the parties, they were not able to resolve this issue. The petitioner has, therefore, approached this Court under Section 11 of the Act.

4. Notice was issued on 29.04.2024. Pursuant to the order dated 16.07.2024, Mr. Ankur Mittal, learned Standing Counsel for the Union of India, has taken instructions. He submits that by a communication dated 31.07.2024, the respondent has purported to appoint a nominee arbitrator. With reference to arbitration clause, however, it appears that there is no provision for a three-member tribunal and that the disputes would have to be adjudicated by a sole arbitrator in terms of Section 10(2) of the Act.

5. In view of the above, learned counsel for the parties request that an independent arbitrator may be appointed.

6. The petition is therefore allowed and Hon'ble Mr. Justice Jayant Nath, former Judge of this Court [Tel: 8527959494] is appointed as the arbitrator to adjudicate disputes between the parties under the Agreement. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

7. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.



8. All rights and contentions of the parties, including on maintainability and merits of the claims, are left open for adjudication by the learned arbitrator.

9. Mr. Monish Panda, learned counsel for the petitioner, states that the hearings may be fixed in Vadodara or Ahmedabad, as the project in question was situated there and the records are available there. I find that the contract, by vesting exclusive jurisdiction upon the Courts in Delhi, provides *prima facie* for the seat of arbitration to be in Delhi. However, I leave it to the parties to make their submissions as to a convenient venue before the learned Arbitrator, who may give necessary directions on this aspect.

PRATEEK JALAN, J

AUGUST 7, 2024

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