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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 661/2023**

ORIENTAL PATHWAYS AGRA PVT LTD Petitioner

Through: Mr. Anil Kumar Airi, Sr. Adv. with
Ms. Sadhana Sharma, Mr. Ravi K.
Chandna, Mr. Shayuk Kumar, Mr.
Mudit Ruhella & Mr. Girish Shankar
Advs. (M: 7763815998)

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA
& ANR. Respondents

Through: Mr. Ankur Chhibber with Mr. Parv
Garg, Advs. (M. 9810138144)
Mr. Mahaling Pandarge, Advocate for
R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER
% **14.02.2024**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed by the Petitioner- Oriental Pathways Agra Pvt. Ltd. seeking appointment of an arbitrator from the panel of existing arbitrators, as it is stated that the Respondent No. 1-NHAI failed to appoint its nominee Arbitrator in terms of the Concession Agreement dated 10th March, 2006. As per the petition, in terms of the letter dated 6th June, 2023, Respondent No. 2-Indian Road Congress was approached by the Petitioner-Oriental Pathways (Agra) Pvt. Ltd. to appoint an arbitrator on behalf of Respondent No.1.
3. The short issue is whether the NHAI was entitled to replace its nominee



Arbitrator, who had unfortunately passed away. The challenge in the present petition is that the nomination was not made within the 30-day period. However, after seeing the record, it appears that the nomination was made with a 13 days delay.

4. Mr. Anil K Airi, Id. Senior Counsel appearing for the Petitioner has relied upon the decision of the Supreme Court in ***Walter Bau AG v. Municipal Corporation of Greater Mumbai, (2015) 3 SCC 800*** to argue that since the arbitrator was not nominated within a 30 days period, the NHAI forfeited the right to make said nomination. On the other hand, Id. Counsel appearing for the NHAI argues that the decision in ***Datar Switchgear Ltd. v. Tata Finance Ltd. & Anr., (2000) 8 SCC 151*** allows for flexibility in the time period for the appointment of a nominee Arbitrator.

5. The Court has considered the matter. The total delay in NHAI's nomination of its Arbitrator amounts to a 13-day delay. Upon a perusal of both judgments, this Court is unable to arrive at a conclusion that the NHAI lost its right to appoint its nominee Arbitrator, as the delay, given the flexibility allowed by ***Datar Switchgear Ltd. (supra)*** and the specific facts and circumstances of this case, can be seen as explainable. However, the Id. Counsel for the NHAI has sought instructions and submits that the NHAI would not object to the appointment of an independent Arbitrator in place of its nominee Arbitrator.

6. Accordingly, instead of delving into the legal issues raised in this matter, specifically whether the NHAI forfeited its right to appoint nominee Arbitrator due to a 13 days' delay, it is deemed appropriate, with the consent of the parties, for this Court to appoint Justice Manmohan Singh (Retd) (9717495001) as the Arbitrator on behalf of the NHAI. The said Arbitral



Tribunal is now fully constituted. The newly constituted Arbitral Tribunal shall now proceed with the matter from the stage from where earlier Tribunal left the matter, without any undue delay. The fee of the newly appointed Arbitrator shall be as per Schedule 4 of the Act.

7. The present petition is disposed of in the above terms.

PRATHIBA M. SINGH, J.

FEBRUARY 14, 2024/dk