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

+ O.M.P. (T) (COMM.) 46/2023, I.A. 12316/2023 & 12317/2023

NATIONAL HIGHWAYS  
AUTHORITY OF INDIA

..... Petitioner

Through: Ms. Gunjan Sinha Jain, Advocate

versus

M/S BILASPUR PATHRAPALI  
ROAD P LIMITED

..... Respondent

Through: Mr. Nilava Bandyopadhyay and  
Mr. Rahul Pandey, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**  
**03.04.2024**

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1. By way of this petition, under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner – National Highways Authority of India [“NHAI”] seeks termination of the mandate of the Arbitral Tribunal, which is in *seisin* of disputes between the parties arising out of a Concession Agreement dated 14.05.2018.

2. The arbitration proceedings have been commenced in terms of an arbitration clause [Clause 38.3] of the Concession Agreement. The relevant part of Clause 38.3 for the purposes of the present dispute is reproduced as below:

*“38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 38.3.2. Such arbitration shall be held in accordance with the*



*Rules of Society for Affordable Redressal of Disputes (“SAROD”), 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 and Conciliation Act, 1996. The place of such arbitration shall be the Delhi and the language of arbitration proceedings shall be English.”*

3. The issue which has given rise to the present petition concerns the fees and expenses of the learned Arbitral Tribunal. The Tribunal has considered the issues in two procedural orders dated 05.05.2023 and 16.05.2023. NHAI applied for review of the said orders and the present petition was adjourned to await the decision of the Tribunal on the said application. By order dated 19.01.2024, the Tribunal has rejected NHAI’s application in this regard.

4. Ms. Gunjan Sinha Jain, learned counsel for the petitioner, draws my attention to the orders of the Tribunal dated 05.05.2023 and 16.05.2023. In the order dated 05.05.2023, the Tribunal held, on an interpretation of Clause 38.3.1, that the provisions of the Society for Affordable Redressal of Disputes Rules [“SAROD Rules”] or such other rules, which may be mutually agreed, would yield to the provisions of the Act, including the IV<sup>th</sup> Schedule. On this basis, the Tribunal rejected the contention of NHAI that the members of the Tribunal shall not be entitled to separate fees for the claims and counter claims. As far as this aspect is concerned, Ms. Jain states that NHAI has accepted the position of the Tribunal and, in fact, the SAROD Rules have also been modified on 29.01.2024, consistent with the IV<sup>th</sup> Schedule of the Act. This issue, therefore, no longer survives for consideration.

5. The only other direction in the order dated 05.05.2023 is as follows:



*“xxvii) So far as the issue relating to mode of payment of fees and the quantum and mode of payment of expenses is concerned, the tribunal would hear further arguments of the parties and then pass appropriate order.”*

6. In the order dated 16.05.2023, the Tribunal gave directions for deposit of *ad hoc* advance fees to each of the members of the Tribunal and administrative/secretarial expenses. Ms. Jain states that these have also been complied with. The Tribunal thereafter noted that direction for further payment of fees to the members of the Tribunal and secretarial expenses shall be separately issued from time to time.

7. Ms. Jain submits that the substantive grievance of NHAI is with regard to bypassing of the SAROD Rules with regard to the payment of fees and expenses of the Arbitral Tribunal. However, once the issue of separate fees for claims and counter claims has been resolved, I do not find any conclusive decision of the Tribunal bypassing the SAROD Rules. Upon a reading of the orders dated 05.05.2023 and 16.05.2023, the Tribunal has only taken the view that Clause 38.3.1 provides for application of the SAROD Rules, but yields to the provisions of the Act and the IV<sup>th</sup> Schedule, insofar as they are inconsistent. The Tribunal has not rendered a decision that the SAROD Rules would not apply, even if there is no inconsistency between the said Rules and the provisions of the Act and the IV<sup>th</sup> Schedule. The point upon which the inconsistency was found, i.e., whether the Tribunal was entitled to separate fees for the claims and counter claims, has already been resolved. The Act and the IV<sup>th</sup> Schedule do not contain any provisions with regard to the mode of payment of arbitral fees, or the quantum or mode of payment of expenses. The Arbitral Tribunal has also kept these questions open for further



directions, after hearing learned counsel for the parties.

8. In view of the above, I do not find any ground to terminate the mandate of the Tribunal in the facts of the present case, leaving it open to the parties to make their submissions before the Tribunal with regard to these aspects, in terms of the directions of the Tribunal itself, contained in paragraph 6 (xxvii) of the order dated 05.05.2023 and paragraphs 6 and 7 of the order dated 16.05.2023.

9. The petition is disposed of in these terms.

**PRATEEK JALAN, J**

**APRIL 3, 2024**

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