



\$~6

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

+ **ARB.P. 616/2024**

**M/S ARSS-SCPL (JV)**

.....Petitioner

Through: **Mr Sidhant Dwivedi and Mr Manoj  
Kumar, Advs.**

versus

**RAIL VIKAS NIGAM LTD.**

.....Respondent

Through: **Mr Udit Seth, Mr Anil Seth and Mr  
Divyanshu, Advs.**

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**05.08.2024**

%

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Nominee Arbitrator on behalf of the respondent to adjudicate disputes between the parties.
2. The parties entered into an Agreement dated 16.08.2019 for construction of Earth work, Bridge work, Protection work of minor and major bridges, slope of bank, Buildings, site facilities, General Electrical works and other miscellaneous works in Section Deobahal (IN)-Barpali (IN) in connection with the doubling of Sambalpur - Titlagarh in Sambalpur Division of East Coast Railway.



3. The arbitration clause is Clause 20.3 which reads as under:

**“20.3 Arbitration**

*Any dispute, in respect of which amicable settlement has not been reached, arising between the Employer and the Domestic or Foreign Contractor related to any matter arising out of or connected with this contract. then the contractor shall be entitled to demand in writing that the dispute or difference be referred to arbitration.*

*Only such dispute(s) or difference(s) in respect of which the demand had been made for amicable settlement under GCC 20.2 but could not be settled, shall be referred to arbitration subject to the condition that cumulative amount of claims in the contract is not exceeding 20% of the contract price. IN case the cumulative amount of claims exceeds 20% of the contract price, arbitration clause will not be applicable.*

*The Arbitration proceeding shall commence from the date, a written and duly quantified demand for arbitration is received by Chairman and Managing Director, Rail Vikas Nigam Limited, New Delhi (CMD/RVNL).*

*The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996 and any statutory modification or re-enactment thereof.*

*Further, it is agreed between the parties as under:*

*20.3.1 Number of Arbitrators: The arbitral tribunal shall consist of three arbitrators.*

**20.3.2 Procedure for Appointment of Arbitrators: .....**



**20.3.3 Qualification and Experience of Arbitrators (to be appointed as per sub-clause 20. 3.2 above):** *The contract being of specialised nature requiring knowledge and experience of dealing with construction contracts, the arbitrators to be appointed shall have minimum qualification and experience as under :*

*Arbitrator shall be:*

*a working/retired officer (not below E-9 grade and above in a PSU with which RVNL has no business relationship) of any discipline of Engineering or Account/Finance department, having experience in Contract Management in construction contracts; or*

*a retired officer (retired not below the HAG level) of any Engineering/Accounts Services of Central Government, having experience in Contract Management of construction contracts; or a retired officer who should have retired more than 3 years previously from the date of appointment as Arbitrator (retired not below E-9 grade in RVNL or a PSU with which RVNL has a business relationship) of any Engineering discipline or Accounts department, having experience in Contract Management of construction contract.*

*No person other than the persons appointed as per above procedure and having above qualification and experience shall act as Arbitrator. In a case any person having the qualification and experience other than that mentioned above is nominated as arbitrator, the arbitration clause shall cease to exist and shall*



*not be applicable.*

.....

*20.3.8 Arbitration proceedings shall be held at New Delhi, India or at a place where CPM/RVNL's (dealing the contract) office is located, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English.”*

4. As there were disputes between the parties, the petitioner nominated its Nominee Arbitrator on 29.01.2024 and requested the respondent to appoint their Nominee Arbitrator.
5. Since the respondent has not appointed their Nominee Arbitrator, the present petition has been filed.
6. Mr Seth, learned counsel for the respondent admits the arbitration clause between the parties but has raised an objection regarding the authorization by the joint venture.
7. Mr Dwivedi, learned counsel for the petitioner has drawn my attention to a letter dated 16.01.2024 issued by the Resolution Professional on behalf of M/s ARSS Infrastructure Projects Limited authorizing Shri Anil Agarwal to take steps to protect the interest of M/s ARSS Infrastructure Projects Limited (major shareholder) with regard to the Contract.
8. He has further drawn my attention to another Resolution of Board of Directors of M/s. Shivam Condev Pvt. Ltd. i.e. the minority share holder of the petitioner authorizing Shri Anil Agarwal.
9. As the petitioner comprises of M/s ARSS Infrastructure Projects Limited (under CIRP) and M/s. Shivam Condev Pvt. Ltd. and both of them have placed the requisite of authorisations in favour of Shri Anil Agarwal, I



am of the view that the present petition has been validly instituted.

10. Despite the letter dated 29.01.2024, the respondent has not appointed its Nominee Arbitrator in terms of the arbitration clause and even till today, there is nothing on record to show that the respondent has appointed its Nominee Arbitrator, the petition needs to be allowed.

11. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Anand Kumar, Retired Chief Engineer, Government of Haryana (Mob. No. 9716753377) is appointed as a Nominee Arbitrator on behalf of the respondent.
- ii) Both the Nominee Arbitrators shall appoint the Presiding Arbitrator to adjudicate the disputes between the parties.
- iii) 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 Arbitral Tribunal shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iv) The learned Arbitrators are requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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/counter-claims and merits of the dispute of either of the parties including taken in the reply by the respondent, are left open for adjudication by the Arbitral Tribunal.



12. The petition is allowed and disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**AUGUST 5, 2024**

sr

*Click here to check corrigendum, if any*