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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 633/2024 and I.A. 10894/2024**

M/S DPS CONSTRUCTION

..... Petitioner

Through: Mr. Atul Kumar & Ms. Aatrayi Das
& Ms. Shashi Bhushan Singh, Advs.
(M- 9315148874)

versus

GANNON DUNKERLEY AND CO. LTD.

..... Respondent

Through: Appearance not given.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **14.05.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-M/s DPS Construction under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator.
3. It is stated in the petition that two agreements dated 22nd June, 2022 and 13th December, 2022 (*hereinafter, 'agreements'*) were entered into between the parties herein. The agreement dated 22nd June, 2022 was entered with regard to work-civil repair and maintenance works at DTA, SEZ and OMSH plants of Reliance Industries Ltd. (RIL) at Jamnagar. The agreement dated 13th December, 2022 was entered into between the parties with respect to work- minor project construction (PMC) work for DTA Township, PCG-DTA/SEZ, C2 and SEZ of Reliances Industries Ltd. (RIL) at Jamnagar.
4. The background of the case is that the said two agreements were terminated by the Respondent-M/s Gannon Dunkerley and Corporation Limited vide letters dated 10th August, 2023. However, at the time of



termination, it is alleged that the Respondent was liable to pay an outstanding amount of approximately Rs. 20 Crores. Disputes arose between the parties for non-payment of alleged dues and the Petitioner vide notice dated 11th January, 2024 invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996. The Petitioner is stated to have nominated Mr. Hemendra P. Baxi (Retd. District and Sessions Judge in Rajkot) as their arbitrator while the Respondent is stated to have nominated Mr. Sundeep Nayak.

5. However, Mr. Baxi for some reasons had refused to accept the nomination. Hence the present petition for constitution of the Tribunal.

6. The Court has heard Id. Counsels for the parties. The claims of the Petitioner are to the tune of approximately Rs.20 crores under both the agreements. The Respondent's case is that it has claims of more than Rs.98 crore against the Petitioner.

7. Considering the nature of the claims, both parties submit that a three member tribunal would be appropriate. Accordingly, in place of Mr. Baxi, who was the Petitioner's nominee, **Mr. S.C. Malik, Additional District & Session Judge Delhi (Retd.) Mob: 9910384635** is appointed as the Petitioner's nominee. **Justice M.R. Shah (Former Judge, Supreme Court of India) Mob: 9825049081** is appointed as the Presiding Arbitrator with the consent of the parties.

8. Both the parties give consent for the arbitration to take place under the aegis of the DIAC.

9. Accordingly, let the arbitration take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.



10. List before the DIAC on 4th July, 2024.
11. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.
12. The petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

MAY 14, 2024

Rahul/rks