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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 20th May, 2024

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ARB.P. 674/2024**M/S PRAGATI CONSTRUCTION CONSULTANTS**

Through its Partner Sh. Tarun Gupta
Having its office at 28/12, East Punjabi Bagh,
New Delhi-110026

Mob:- +91 9313601451

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..... Petitioner

Through: Counsel for petitioner.

versus

UNION OF INDIA

Through the General Manager,
Northern Railway, Baroda House, New Delhi-110001
Represented by:-

1. The Deputy Chief Engineer/Const./MB,
Northern Railway, Moradabad,
Uttar Pradesh-244001
Email: uoidhc@gmail.com

2. The General Manager,
Northern Railway, Baroda House,
New Delhi-110001

Email: uoidhc@gmail.com

..... Respondents

Through: Ms. Rukhmani Bobde, Mr. Hussain
Taqvi and Mr. Amlaan Kumar,
Advocates for UOI.

CORAM:



HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 29609/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, has been filed on behalf of the petitioner, seeking appointment of an independent sole Arbitrator or a nominee Arbitrator.
4. It is submitted by the petitioner that the petitioner is a partnership Firm and is engaged in the business of rendering its various services relating to construction to different agencies including departments of the Government of India.
5. The respondent invited tender for the execution of work named and styled as “*Construction of four lane ROB in lieu of L-Xing No. 359 (Span 1 X 46.029m) at Km: 1305/14-15 on CHTI-BE Section and L-Xing No. 359A (Spans 1 X 46.050+2X35.613m) at Km: 00/13-14 on CHTI-CH Section on composite steel girder and construction of LHS in lieu of L-Xing No. 359 & 359 A near Baareilly*” (hereinafter referred to as ‘the work’).
6. In response to the invitation to the tender, the petitioner submitted its tender for the work, which was accepted by the respondent No. 1 *vide* letter of appearance No. 74-W/4/1/411-A/WA/MB dated 25.02.2019.
7. The Contract Agreement got executed between the parties, which is governed by Clause 64 of General Conditions of Condition providing settlement of disputes between the parties by Arbitration.



8. The petitioner submits that despite all the arrangements having been made by him, the work could not be completed within stipulated period due to various delays, defaults and breaches of the Contract Clauses on the part of the respondent, as mentioned in para 7(vii) of the Petition.

9. The work got completed on 31.03.2023. On 19.04.2023, the Completion Certificate had been issued by the respondent. The petitioner *vide* its Letter dated 25.04.2023 requested for release of Performance Guarantee of Rs.88,10,730/- and Rs.29,20,000/- and the PBG was released on 09.05.2023.

10. The petitioner had deposited Security in the form of Bank Guarantee bearing No. 027GT02231490006 dated 29.05.2023, for an amount of Rs.1,80,50,000/- for a period up to 30.11.2023. The cash was released on 28.06.2023 against BGs. Thereafter, *vide* its Letters dated 22.08.2023 and 23.08.2023, the petitioner informed the respondents about the financial coercion and pressure.

11. The petitioner *vide* its Letter dated 07.03.2024 proposed the nominee Arbitrator Sh. Alok Kumar, CAO Northern Railway (Retd.) and requested the respondent to appoint the Arbitrator within 30 days of receipt of the said letter.

12. Despite service of Letters dated 29.01.2024, 07.03.2024 and 16.03.2024 on the respondent No. 2 and despite expiry of about more than 60 days from 29.01.2024, no response has been received by the petitioner and the respondent has also not nominated its nominee Arbitrator. Moreover, till date neither any payment has been made.

13. Learned counsel appearing on behalf of the respondent, has no objection for the appointment of an Arbitrator.

14. Considering that there is a valid Arbitration Agreement between the



parties and in the light of the facts and discussions, the present Petition is allowed and Justice Vikramjeet Sen, Former Judge, Supreme Court of India (M) 8447333366, 9818000290, is hereby appointed as the Sole Arbitrator, to adjudicate upon the disputes between the parties.

15. The parties are at liberty to raise their respective objections before the learned Arbitrator.

16 This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996.

17. The appointment of the Arbitrator shall be governed by the Rules framed by the DIAC including the fees and the disclosure to be made by the learned Arbitrator in conformity of Section 12 of the Arbitration and Conciliation Act, 1996.

18. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry.

19. A copy of this Order be also forwarded to the learned Arbitrator, for information.

20. The Petition is accordingly disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 20, 2024/RS