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

+ **ARB.P. 958/2024**

B M CONSTRUCTION COMPANYPetitioner

Through: **Mr. Himanshu Upadhyaya Adv.**

versus

UNION OF INDIA/NORTHERN RAILWAYSRespondent

Through: **Ms. Pratima N. Lakra, CGSC with Mr
Chandan Prajapati, Adv**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

23.10.2024

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties regarding a Contract dated 09.05.2017 entered into between the parties for Construction of 2 Lane Road over Bridge Span 2X76.50 Metre (Bow String Steel Girder) (Railway Portion) + 9X18.00 Metre (Steel Girder) Stilt Portion including construction of approaches with reinforced Earth (RE) Walls in lieu of Level Crossing No.153 (Kotgaon Phatak) at KM 20.21, Dhobi Ghat near Ghaziabad Railway Station on Ghaziabad-Saharanpur Section.

2. The disputes have arisen between the parties regarding certain claims which had arisen between them during the construction work and an Award dated 28.10.2022 was passed allowing some of the claims in favour of the



Petitioner. It is stated that the work has ultimately been completed on 22.04.2023. It is stated that there are still disputes between the parties regarding the work executed by the Petitioner.

3. Clause 64 of the Indian Railways Standard General Conditions of Contract, 2014, which is an arbitration clause, provides for settlement of disputes through arbitration. Relevant portion of the said Clause reads as under:

“64.(1) Demand For Arbitration:

64.(1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.”

4. Material on record indicates that a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was sent by the Petitioner to the Respondent on 11.03.2024. It is stated that since no steps were taken by the Respondent, the Petitioner has approached this Court by filing the present petition seeking appointment of an Arbitrator

5. Notice was issued by this Court on 26.07.2024.

6. Learned Counsel for the Respondent has appeared today.



7. In view of the fact that disputes have arisen between the parties, this Court is inclined to refer the matter to Delhi International Arbitration Centre (DIAC).

8. Accordingly, the Delhi International Arbitration Centre (DIAC) is requested to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

9. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

10. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

12. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

13. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 23, 2024

RJ