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

+ ARB.P. 1030/2024

M/S FASTRACK INFRASTRUCTURE

NEW DELHI

.....Petitioner

Through: Mr. S.W. Haider, Advocate.

versus

UNION OF INDIA

.....Respondent

Through: Ms. Iram Majid, CGSC with
Mohd. Suboor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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18.07.2024

I.A. 33431/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 1030/2024

1. The petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under a contract dated 16.01.2020 [“the Contract”].

2. The Contract contains an arbitration clause [Clause 64 of the General Conditions of Contract], which provides for resolution of disputes by arbitration. The Contract provides for appointment of arbitrator separately in cases where the applicability of Section 12(5) of the Act has been waived and where it has not. In the present case, the applicability of the provision has not been waived.



3. The appointment mechanism specified in the Contract also provides that if the claim does not exceed Rs. 50 lakhs, it would be adjudicated by a retired Railway Officer as the sole arbitrator, for which purpose, the Railways would send at least four names to the contractor, from which the contractor would choose two, and the Railways would appoint one of them as the arbitrator.

4. Mr. S.W. Haider, learned counsel for the petitioner, submits that, in the present case, the proposed claim will not exceed Rs. 50 lakhs, and a sole arbitrator may therefore be appointed. However, he submits that the provisions for nomination of four retired railway officers by the Railways, from which the contractor may choose two and the final appointment would be made by the Railways, is contrary to law.

5. As far as the contractual clause is concerned, it appears to me that the panel comprising only of retired railway officers, and the mechanism by which the contractor's choice is restricted to four names proposed by the Railways, is not broad-based so as to fall within the judgment of the Supreme Court in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* [(2020) 14 SCC 712].

6. Ms. Iram Majid, learned Standing Counsel for the Union of India, submits that she has also been instructed that the Court may appoint an arbitrator.

7. Having regard to the above and with the consent of learned counsel for the parties, disputes between the parties under the Contract dated 16.01.2020 will be adjudicated by arbitration, under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"]. DIAC is requested to nominate an arbitrator from its



panel. The proceedings will be subject to the Rules of DIAC, including as to remuneration of the learned arbitrator.

8. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. All rights and contentions of the parties are left open for adjudication by the learned arbitrator.

PRATEEK JALAN, J

JULY 18, 2024
“*Bhupi*”/