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

+ O.M.P.(MISC.)(COMM.) 556/2023

DSC LTD BEST AND CROMPTON ENGINEERING
PROJECTS LTD JV

..... Petitioner

Through: Mr. Deepak Khurana, Advocate.

versus

RAIL VIKAS NIGAM LTD

..... Respondent

Through: Mr. Jitender Kumar Singh, Ms. Anjali
Kumari, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.01.2024

1. The petitioner has filed this petition under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], for extension of the mandate of the learned Arbitral Tribunal which is in *seisin* of disputes between the parties under a contract pursuant to a notice inviting tender dated 15.04.2008.

2. The learned Arbitral Tribunal was first constituted pursuant to an order of this Court dated 21.02.2018 in ARB.P. 505/2017. It entered into the reference on 19.04.2018. The mandate of the Tribunal was thereafter extended from time to time. The Tribunal was reconstituted pursuant to the resignation of one of the learned arbitrators on 25.05.2023. The petitioner nominated a substitute arbitrator in place of the learned arbitrator who had resigned.



3. I am informed that proceedings before the learned Tribunal are at the stage of final arguments, which have re-commenced upon the reconstitution of the tribunal. The mandate of the tribunal has expired on 01.11.2023.

4. The principal objection taken by the respondent is that the substitute arbitrator appointed by the petitioner is ineligible, as he is not on the panel of arbitrators of the respondent. However, it is accepted that this objection has been rejected by a judgment of this Court dated 21.11.2023 in O.M.P.(T)(COMM) 106/2023. This Court has come to the view that there is no infirmity in constitution of the tribunal.

5. The only other ground taken by learned counsel for the respondent is that the respondents' counter claims are not being adjudicated by the Tribunal as the petitioner did not pay its share of the arbitrator fees on account of the counter claims. I am of the view that this is not a matter which comes in the way of extension of the mandate under Section 29A of the Act. There are adequate provisions in the Act to deal with the consequences of non-payment of arbitral fees by either of the parties, either on account of claims or counter claims.

6. For the aforesaid reasons, the objections of the respondent are unmerited.

7. The petition is allowed and the mandate of the learned Arbitral Tribunal is extended by a period of nine months with effect from 01.11.2023.

8. Learned counsel for the respondent submits that the respondent is in the process of considering whether to challenge the order of this Court dated 21.11.2023 before the Supreme Court. Needless to say, this order is not intended to prejudice such right of the respondent. Further proceedings



before the Tribunal will be subject to any orders that the Supreme Court may pass in the event the judgment dated 21.11.2023 is challenged before the Supreme Court.

PRATEEK JALAN, J

JANUARY 16, 2024

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