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

+ **ARB.P. 1181/2024**

DELHI METRO RAIL CORPORATION LTD.Petitioner

Through: **Mr. Ankur Chhibber and Mr.
Anshuman Mehrotra, Advs.**

versus

M/S PARSVNATH DEVELOPERS LTD.Respondent

Through: **Mr. Deeptanshu Jain, Adv.**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **03.12.2024**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes arising out of the Concession Agreement dated 06.09.2004.

2. The Clause 11.2.1 in the agreement provides for arbitration by a panel of three Arbitrators, in terms of Arbitration and Conciliation Act, 1996. Clause 11.2.1 reads as under:

“Subject to the provisions of Clause 11.1, any Dispute, which is not resolved amicably, shall be referred to a panel of three (3) arbitrators in terms of the Arbitration & Conciliation Act, 1996. For this purpose DMRC will make out a panel of five (5) possible arbitrators. Each party shall nominate an arbitrator out of this panel submitted by DMRC and these two arbitrators will appoint the third arbitrator in writing and also inform the concerned parties about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation the other party fails to appoint its arbitrator,



the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration & Conciliation Act. 1996. The arbitrator shall give item-wise and reasoned award. Where three (3) arbitrators have been appointed, the award of the majority will prevail.”

3. Mr. Ankur Chhibber, the learned counsel for the petitioner submits that the petitioner gave a notice dated 09.01.2023 to the respondent and invoked the arbitration clause and provided the respondent with panel of 05 Arbitrators for nominating one Arbitrator out of the said panel for three members Arbitral Tribunal within 15 days.

4. However, the respondent *vide* letter dated 24.01.2023 denied there being any claims and amount payable *qua* the agreement and categorically stated that the respondent is not bound to nominate the Arbitrator from the panel of Arbitrators provided by the petitioner.

5. Issue notice. Mr. Deeptanshu Jain, Advocate accepts notice on behalf of the respondent. He submits that existence of Arbitration Agreement is undisputed and the matter may be referred to arbitration leaving all rights and contentions of the parties open including the objection of limitation, for being adjudicated by the Arbitral Tribunal.

6. It is settled law that one party to the arbitration agreement cannot compel the other party to select its nominee arbitrator from the panel provided by it. Such a proposal has been held to be restrictive.¹

7. The learned counsel for the parties are agreeable that an independent impartial Arbitral Tribunal may be appointed to adjudicate the dispute between the parties.

¹ Voestalpine Schienen Gmbh vs. Delhi Metro Rail Corporation Limited, (2017) 4 SCC 665; Taleda Square Private Limited vs. Rail Land Development Authority, 2023 SCC OnLine Del 6321; Margo Networks Pvt. Ltd. vs. Railtel Corporation of India Ltd., 2023 SCC OnLine Del 3906.



8. The agreement between the parties contemplates a three members Arbitral Tribunal for which each party shall nominate an Arbitrator and these two Arbitrators will appoint the third Arbitrator. Accordingly, Justice Najmi Waziri, former Judge of this Court [Mobile no. 9810097311] is appointed as a nominee Arbitrator of the petitioner and Justice Brijesh Sethi, former Judge of this Court [Mobile no. 9910384669] is appointed as a nominee Arbitrator of the respondent. These two learned Arbitrators with their concurrence shall appoint the presiding Arbitrator within 30 days of the service of this order.

9. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Shershah Road, Delhi High Court, New Delhi-110003, and will be governed by the rules of DIAC, including as to the remuneration of the learned Arbitrators.

10. The learned Arbitrators are requested to furnish declaration under Section 12 of the Act, prior to entering upon the reference.

11. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitral Tribunal.

12. The petition stands disposed of.

VIKAS MAHAJAN, J

DECEMBER 3, 2024/dss