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

+ **ARB.P. 1298/2023**

NAIN ENTERPRISES

.....Petitioner

Through: Mr. Prakash Singh and Mr.
Abhimanyu Sharma, Advocates

versus

NEW INDIA STRUCTURE PVT. LTD. & ANRRespondents

Through: Mr. Ravi Prakash, CGSC along with
Mr. Ali Khan, Advocates
Mr. Kamal Jit Singh Mann, Adv. for
R-1
Mr. Mayank Grover and Ms. Pratibha
Vyas, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
12.11.2024

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1. The Petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. It is stated that the Petitioner and Respondent No.2 entered into a Concession Agreement dated 11.02.2010 with the National Highways Authority of India for development, maintenance and management of NH-18 including the section from km 167.750 to km 356.502 by augmenting the existing road on the Cuddapah-Kurnool section in the State of Andhra Pradesh by four laning on Build, Operate and Transfer.



3. It is stated that Respondent No.2 sublet the work to Respondent No.1 for performance of the contract as per the contract agreement dated 02.03.2020 entered into between the Respondents.
4. It is stated that Respondent No.1 further sublet the contract to the Petitioner for Engineering, Procurement, Construction, Operation and Maintenance of four laning work of Cuddapah- Kurnool section of NH-18 from the existing KM- 167.750 to KM 356.502 in the state of Andhra Pradesh under NHDP-Phase III BOT Basis.
5. It is stated the work order for the said contract was issued in favour of the Petitioner on 21.10.2020. It is stated that the work was completed within the stipulated time period of contract. However, there was a dispute regarding the payment arose between the Petitioner and Respondent No.1.
6. It is stated that the dispute regarding payment was settled by Respondent No.2 and Respondent No.1 was directed to make the payment. It is stated that since Respondent No.1 failed to settle the amounts due to the Petitioner, the Petitioner issued notice dated 14.08.2023 invoking arbitration as provided under Clause 66 of the work order/written agreement dated 21.10.2020.
7. It is stated since no reply has been received by the Petitioner, the Petitioner has approached this Court by filing the present petition seeking appointment of an Arbitrator.
8. Material on record indicates that Respondent No.2 is not a party to the arbitration agreement entered into between the Petitioner and Respondent No.1. Therefore, Respondent No.2 is deleted from the array of parties. However, it is always open for the Petitioner to implead Respondent No.2 before the learned Arbitrator, which will be dealt with by the learned



Arbitrator in accordance with law and on its own merits.

9. Accordingly, Mr. Vineet Kothari, former Judge Rajasthan High Court (Mob. No. 9480822552) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.

10. 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.

11. 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.

12. 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 its own merits, in accordance with law.

13. It is made clear this Court has not made any observation on the merits of the case and as to whether Respondent No.2 is a necessary party or not.

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

SUBRAMONIUM PRASAD, J

NOVEMBER 12, 2024

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