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

+ ARB.P. 1305/2024

VIHAAN NETWORKS PVT LTDPetitioner

Through: Mr. Ankit Parhar, Advocate.

versus

UNION OF INDIARespondent

Through: Mr. Manish Mohan, CGSC with Mr.
Jatin Teotia, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **11.09.2024**

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], for appointment of an arbitrator to adjudicate disputes between the parties under an arbitration agreement in terms of a Notice Inviting Tender dated 15.11.2018 and an Acceptance of Tender dated 18.02.2019.
2. Clauses 11 and 14 of the "Post Tender Obligations", contained in the Acceptance of Tender, provide that disputes would be resolved by arbitration of a sole arbitrator. The Director General, Border Security Force ["DG, BSF"] or his nominee have been named as the arbitrator. Jurisdiction has been vested in the Courts at the place of issuance of tender, which is New Delhi.
3. Disputes having arisen between the parties, the petitioner invoked



arbitration by a letter dated 05.07.2024. In response, by letter dated 26.07.2024, the respondent asserted its right to refer the disputes to DG, BSF or his nominee.

4. Pursuant to the order dated 23.08.2024, Mr. Manish Mohan, learned Central Government Standing Counsel, has taken instructions and accepts that arbitration by the DG, BSF or his nominee would be impermissible in view of the judgments of the Supreme Court in *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760] and *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377], which have been followed by this Court in *Babu Lal v. Cholanandalam Investment & Finance Co. Ltd.* [2023 SCC OnLine Del 7239], *Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat* [2023 SCC OnLine Del 3148], *Govind Singh v. Satya Group (P) Ltd.* [2023 SCC OnLine Del 37] and *Ram Kumar v. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268].

5. The existence of the arbitration clause thus being undisputed, learned counsel for the parties submit that the disputes may be referred to an independent arbitrator, leaving all rights and contentions of the parties open for adjudication.

6. With the consent of learned counsel for the parties, the disputes under the Notice Inviting Tender dated 15.11.2018 and Acceptance of Tender dated 18.02.2019 are referred to the arbitration of Mr. S.N. Gupta, Advocate [Tel:9810077343].

7. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the



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.

10. The petition is accordingly disposed of.

PRATEEK JALAN, J

SEPTEMBER 11, 2024

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