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

+ **ARB.P. 1477/2024**

SU TOLL ROAD PRIVATE LIMITED

.....Petitioner

Through: Mr. Aditya Ganju, Mr. Hasan
Murtaza, Ms. Shambhavi Mishra,
Mr. Ankit Sinha, Mr. Sameer
Sharma, Advocates.

versus

**NATIONAL HIGHWAYS AUTHORITY OF
INDIA**

.....Respondent

Through: Mr. Ankur Mittal, Ms. Ikshita
Parihar and Mr. Shubham Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

23.09.2024

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1. The petitioner has approached this Court for appointment of an arbitrator to adjudicate disputes between the parties under a Concession Agreement dated 19.07.2007 [“the Agreement”].

2. The Agreement contain an arbitration clause, which provides as follows:

“39.2 Arbitration

39.2.1 Any Dispute, which is not resolved amicably as provided in Clause 39.1 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to Clause 39.2.2 below. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration Act.

39.2.2 There shall be a Board of three arbitrators of whom each party

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shall select one and the third arbitrator shall be appointed in accordance with the Rules of Arbitration of the Indian Council of Arbitration.

39.2.3 The arbitrators shall issue a reasoned Award.

39.2.4 The venue of such arbitration shall be New Delhi, India.

39.3 Arbitration Awards to be Binding

39.3.1 The Concessionaire and NHAI undertake to carry out any decision or award of the arbitrators (the “Award”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

39.3.2 The Concessionaire and NHAI agree that an Award may be enforced against the Concessionaire and/or NHAI, as the case may be and their respective assets wherever situated.

39.3.3 This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.”

3. Disputes having arisen between the parties, the petitioner invoked the arbitration clause by a letter dated 04.07.2024. It also sought to nominate its arbitrator. Correspondence has thereafter taken place between the parties with regard to the procedure to be followed for appointment of the arbitrator and conduct of the proceedings. By a letter dated 22.07.2024, the respondent contended that the Rules of the Indian Council of Arbitration [“ICA”] were not being followed, contrary to the arbitration clause. The petitioner thereafter proposed an amendment to permit *ad hoc* arbitration, and the respondent counter offered an amendment to incorporate the Arbitration Rules of the Society for Affordable Redressal of Dispute [“SAROD”]. This was not agreeable to the petitioner, which has led to the present petition being filed.

4. I have heard learned counsel for the parties.

5. The dispute, as it stands today, is only with regard to the institutional framework under which the arbitral proceedings are to be



conducted. Mr. Aditya Ganju, learned counsel for the petitioner, submits that the contract provides for constitution of the arbitral tribunal by nomination of one arbitrator by each of the parties, and for the presiding arbitrator to be appointed in terms of ICA Rules. Mr. Ganju submits that such a procedure, by which ICA Rules are applicable, although the power of appointment of a nominee arbitrator is retained by the parties, has been recognised by judgment of the Supreme Court in *C.M.C. Ltd. v. Unit Trust of India and Others*, [(2007) 10 SCC 751] and a judgment of this Court in *Intech Brinechem Limited v. DR Dietrich Process Systems India Pvt. Ltd.* [2023 SCC OnLine Del 1873].

6. Mr. Ankur Mittal, learned counsel for the respondent, states that the petitioner has already appointed its nominee arbitrator, and the respondent intends to appoint Hon'ble Dr. Justice M.K. Sharma, former Judge of the Supreme Court of India as its nominee arbitrator.

7. Having regard to the above, and to the contractual provisions for the presiding arbitrator to be appointed in accordance with the Rules of ICA, the parties are at liberty to approach the ICA for expeditious constitution of the tribunal.

8. In the event of any difficulty, parties are at liberty to take appropriate remedies before this Court.

9. The petition is disposed of with these directions.

PRATEEK JALAN, J

SEPTEMBER 23, 2024
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