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

+ **ARB.P. 1566/2024**

**NIRMAL BUILDINFRA PRIVATE LIMITED** .....Petitioner

Through: Mr. Priyadarshi Banerjee, Mr. Aarlin  
Moncy, Advocates.

versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED** .....Respondent

Through: Ms. Ruchira Gupta along with Ms.  
Harshita Sharma, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

**20.11.2024**

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1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('A&C Act') has been filed by the Petitioner seeking appointment of an independent sole arbitrator to adjudicate the disputes between the parties.

2. It is stated that the Petitioner herein entered into an Engineering Procurement & Construction Agreement dated 15.06.2020 with the Respondent herein for strengthening of Churabari-Agartala section with paved shoulder of NH-08 (74.856 Km) in the State of Tripura on Engineering, Procurement & Construction mode. It is stated that disputes have arisen between the parties. It is stated that the Petitioner herein sent a notice to the Respondent herein on 16.05.2024 invoking Article 26.3 of the Agreement which provides for arbitration for adjudication of the disputes between the parties.



3. Article 26.3 of the Agreement reads as under:

*“Arbitration*

*(i) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally settled by arbitration in accordance with the rules of arbitration of the Society For Affordable Redressal Of Disputes (SAROD).*

*(ii) The parties expressly agree as under in case of arbitration of disputes:*

*(a) There shall be no arbitration for a dispute involving a claim value upto INR 50 Lakh (INR fifty lakh). The Authority's Engineer shall give a reasoned decision in case of such dispute and the same shall be binding on both the parties.*

*(b) In case of a dispute involving claim value of above INR 50 Lakh (INR fifty lakh), but upto INR 50 Crore (INR fifty crore), the same shall be referred to a Sole Arbitrator. Authority shall within 30 (thirty) days propose names of 5 (five) Arbitrators from the list of Arbitrators maintained by SAROD (Society for Affordable Redressal of Disputes) and the Contractor shall within 30 (thirty) days select one name from the list of five and the name so selected by the Contractor shall be the Sole Arbitrator for the matter in dispute. In case Authority delays in providing the list of 5 (five) names, President, SAROD will provide 5 names within 30 (thirty) days of receipt of reference from aggrieved party in this regard.*

*(c) In case the Contractor fails in selecting one from the list of live, President, SAROD shall select one from the list of five provided by Authority within 30 (thirty) days of receipt of*



*reference from aggrieved party in this regard. In case of a dispute involving a claim value of more than INR 50 Crore (INR fifty crore), the same shall be referred to an Arbitral Tribunal comprising 3 (three) arbitrators. The Dispute shall be settled in accordance with the rules of Arbitration of the Society for Affordable Redressal of Disputes (SAROD).*

*(d) The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English*

*(e) The fees of the Arbitrators shall be as per the rates fixed by the Authority from time to time The cost of arbitration shall be e shared equally by the parties.*

*(f) Neither Parry shall be entitled for any pre-reference or pendent lite interest, Le, interest from date of cause of action till date of Award by Arbitral Tribunal. The parties specifically agree that claim for any such interest shall not be considered and shall be void. The Arbitrator or Arbitral Tribunal shall have no power/ jurisdiction to award pre- reference or pendent lite interest in case of disputes.*

*(iii) The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.*

*(iv) The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective*



*assets wherever situated.*

*(v) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, providing the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.*

*(vi) In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120% (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.”*

4. It is stated that the Petitioner herein sent a notice dated 16.05.2024 to the Respondent invoking the Arbitration Clause. Since no reply has been given by the Respondent to the letter of the Petitioner, the Petitioner has approached this Court by filing the present Petition.

5. Notice in the present Petition was issued on 04.10.2024.

6. Since the Arbitration Clause provides that in case of a dispute involving claim value of above Rs. 50 Crore, the same shall be referred to an



Arbitral Tribunal comprising 3 (three) arbitrators, this Court directed the NHAI to seek instructions and suggest a name for constituting the Arbitral Tribunal.

7. Learned Counsel for the Petitioner has suggested the name of Mr. Kamlesh Kumar, Former Additional Director General of MoRTH, to be appointed as a member of the Arbitral Tribunal. Learned Counsel for the Respondent has suggested the name of Justice V. Ramasubramanian (Retd.), Former Judge of the Supreme Court, as the other member of the Arbitral Tribunal.

8. In view of the fact that disputes have arisen between the Parties and there is an arbitration clause which states that in case of a dispute involving claim value of above Rs. 50 Crore, the same shall be referred to an Arbitral Tribunal comprising 3 (three) arbitrators and out of the three members, two members have already been nominated by the parties, this Court is inclined to appoint Justice Sharad Arvind Bobde, Former Chief Justice of India (Mob. No.9871234803) as the Presiding Arbitrator of the Tribunal to adjudicate upon the disputes between the parties.

9. The Tribunal shall be entitled to fees as per the Schedule of Fees mentioned under the A&C Act.

10. The Tribunal is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.

11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the Tribunal on their merits, in accordance with law.

12. Needless to say, nothing in this order shall be construed as an



expression of this Court on the merits of the contentions of the parties.

13. The present petition stands disposed of in the above terms.

**SUBRAMONIUM PRASAD, J**

**NOVEMBER 20, 2024**

*Rahul*