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

+ **O.M.P. (T) (COMM.) 105/2024 & I.A. 41863/2024**

**NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED (NHIDCL)Petitioner**

Through: Mr. Avneesh Garg, Mr. Rohit Rishi,
Mr. Harsh Pal, Ms. Iptisha,
Advocates.

versus

NSPR - VKJ (JV) & ORS.Respondents

Through: Dr. Amit George and Mr. Shashwat
Kabi, Advocates for Respondent
Nos.1 to 3
Mr. Sunny Choudhary, Advocate.

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

**ORDER
17.12.2024**

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1. The Petitioner has approached this Court under Section 14 & 15 of the Arbitration & Conciliation Act read with Section 11 of the Arbitration & Conciliation Act for substitution of an Arbitrator on the ground that the proceedings have been initiated against the Arbitrator under the Madhya Pradesh Lokayukta Evam Up Lokayukta Adhiniyam, 1981.
2. It is the contention of the Petitioner that since proceedings have been initiated against the Presiding Arbitrator, serious concerns have arisen regarding the credibility of the Arbitrator and in such circumstances the Presiding Arbitrator ought not discharge his functions as an Arbitrator.
3. Notice was issued on 09.10.2024. Replies have been filed by the Respondents including the Arbitrator.



4. The Arbitrators were appointed under the Arbitration Rules. Under the said rules, both the parties appointed their respective nominees and the Presiding Arbitrator was appointed as per the SAROD Rules since there was a dispute regarding the appointment of a third Arbitrator between the two Arbitrators who were nominated.

5. Learned Counsel for Respondent No.1 draws the attention of this Court to Rule 16 of the SAROD Rules which has a specific provision for challenge of Arbitrators. Rule 16 is being extracted in its entirety, which reads as under:-

“Rule 16 — Challenge of Arbitrators

16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he has committed any misconduct.

16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties.

16.3 A Party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that Party.



16.6 The Notice of Challenge must state the reasons for the challenge.

16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an arbitrator has been challenged by one Party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator. ”

6. Learned Counsel for the Petitioner states that it is a time consuming procedure and therefore the Petitioner has approached this Court. It is also contended by learned Counsel for the Petitioner it is not a case of bias alone but a challenge is to the credibility of the Arbitrator itself which might not be covered with Rule 16 of the Sarod Rules.
7. The contention of the learned Counsel for the Petitioner cannot be accepted. Rule 16.1 of Sarod Rules does cover situations like this where the party has lost confidence on the Arbitrator and the credibility also though the word ‘credibility’ is not specifically used in Rule 16.1.
8. In view of the above, this Court is not inclined to appoint an Arbitrator. The Petitioner is directed to approach the arbitral institution by filing an application within a period of two weeks from today and the arbitral institution is directed to consider the application and pass orders within two weeks of the receipt of the application in accordance with law.
9. Due consideration be given by the arbitral institution on the nature of



the objections given by the Petitioner in the petition.

10. The petition is disposed of along with pending application(s), if any.

11. Needless to state that it is always open for the Petitioner to take recourse to such other avenues available to him under law.

12. It is made clear that this Court has not made any observation on the merits of the case.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2024

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