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

+ **O.M.P.(I) (COMM.) 449/2024 & I.A. 49983-84/2024**

**SHANKAR RAMCHANDRA EARTHMOVERS PRIVATE
LIMITED SREPL**

.....Petitioner

Through: Ms. Sadiqua Fatma, Mr. Ishan
Khanna, Mr. Aditya Shandilya, Mr.
Rounak Singh, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Santosh Kumar, Standing counsel

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **24.12.2024**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ('the Act') seeking interim relief to (i) restrain the respondent from acting upon its letters dated 02.09.2024 & 09.08.2024 and (ii) further restrain the respondent from acting upon the recommendation of the Supervision Consultant vide Letter dated 09.09.2024 against forfeiture/encashment of the bank guarantee no. 007GT02222830009 dated 10.10.2022 submitted in favour of the Respondent for an amount of Rs.2,90,18,967/-

2. During the course of submissions, the parties jointly agree that the Arbitral Tribunal can be constituted in accordance with clause 25.1 of the Agreement and this Section 9 petition can be placed before the Arbitral Tribunal for adjudication under Section 17 of the Act.



3. Clause 25.1 reads as under and contemplates in Arbitral Tribunal consisting of three members: -

“25.1 in case of dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such disputes or differences shall be settled as set forth below:

(i) The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time.

The Dispute shall be governed by Substantive Law of India

(ii) The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are as per Annex-I

(iii) Arbitration may be commenced during or after the Contract Period, provided that the obligations of Authority and the Contractor shall not be altered by reason of the Arbitration being conducted during the Contract Period.

(iv) The seat of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.

(v) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.”

4. The matter was passed over to enable the parties to take instructions with respect to the respective nominee Arbitrator.

5. At second call, learned counsel for the Petitioner states on instructions that the Petitioner has nominated Mr. Robinder Singh Sandhu, Former Chief



Engineer, PWD, Punjab [e-mail I.D. sandhu65chd@gmail.com, Phone No. 9988176550) as its nominee Arbitrator. So also, learned counsel for the Respondent states that Respondent has nominated Hon'ble Mr. Justice Pradeep Nandrajog, Former Chief Justice of High Court of Bombay [Mob. No. 9818000130] as its Arbitrator.

6. The learned counsel for the parties state that the said two nominee Arbitrators will mutually appoint the Presiding Arbitrator in terms of the Society for Affordable Resolution of Disputes ('SAROD Rules') on or before 30.12.2024.

7. They further state that the present Section 9 petition be converted into Section 17 petition and placed before the Arbitral Tribunal. Learned counsel for the Respondent states that he will file his reply to the converted Section 17 petition within a period one (1) week from today. Rejoinder thereto, if any, will be filed by the petitioner within one (1) week thereafter.

8. In view of the above, the following directions are hereby being passed: -

- i. This Court take note of the fact that Ms. Robinder Singh Sandhu has been appointed as a nominee Arbitrator of the Petitioner and Hon'ble Mr. Justice Pradeep Nandrajog, Formal Chief Justice of High Court of Bombay has been appointed as a nominee Arbitrator of the Respondent. Therefore, the said two nominee Arbitrators are requested to mutually appoint the Presiding Arbitrator on or before 30.12.2024. Keeping in view the fact that the Section 17 petition has to be placed before the Tribunal for its adjudication.
- ii. The parties are directed to appear before the Tribunal on **31.12.2024** at **11 A.M.** through Video Conferencing link to fix the dates for



hearing in the Section 17 petition.

- iii. It is noted that arbitral proceedings will be governed by the SAROD Rules and the same shall also govern the fees to be paid to the Arbitrators.
- iv. The Arbitrators are requested to furnish a declaration under Section 12 of the Act and communicate the same to the parties prior to 31.12.2024.

9. It is clarified that all rights and contentions of the parties, including on maintainability/arbitrability of the claims and on merits, are left open for adjudication by the Arbitrators and nothing said in this order is an expression on the merits of the case.

10. With the aforesaid directions, the present petition stands disposed of.

11. Registry is directed to send a copy of this order to the Arbitrators.

12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 24, 2024/rhc/ms