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

+ **O.M.P.(MISC.)(COMM.) 162/2024**

BHARAT SANCHAR NIGAM LTD.

.....Petitioner

Through: Mr. L.B. Rai, Mr. Vineesh Tyagi and
Mr. Satvik Rai, Advocates.

versus

M/S SARUP CHAND AND SONS

.....Respondent

Through: Mr. Ravinder Singh Viridi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

17.01.2025

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1. The present petition under Section 39(2) of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner/Organization primarily fixing the fees of the Ld. Arbitrator.
2. Material on record indicates that disputes have arisen between the Petitioner/Organization and the Respondent under a work awarded to the Respondent by the Petitioner/Organization for "Construction of Rural Self Employment Training Institute Building for PNB, including Electrical Work".
3. Since disputes arose between the parties, arbitration was invoked and Mr. Sanjivan Kumar, was appointed as an Arbitrator by consent of both the parties. Material on record indicates that the said Arbitrator was selected since he was in the panel of arbitrators of the Petitioner/Organization.
4. Learned Counsel for the Petitioner/Organization has filed the



Arbitration Guidelines which have framed by the Petitioner/Organization in accordance with the Arbitration and Conciliation (Amendment) Act, 2015. The said guidelines also lays down the fees payable to Arbitrators. The said table of fees is given in Paragraph No.6 of the said guidelines which is being reproduced as under:

6.0 Fees payable to Arbitrators

Arbitration fee for BSNL empanelled arbitrator may prescribe the following fee under Section 31 (A) of the Arbitration and Conciliation Act, 1996

Sum in dispute	Proposed fee
Above Rs. 5,00,000/- and upto Rs. 20,00,000/-	Rs. 45,000/-
Above Rs. 20,00,000/- and upto Rs. 1,00,00,000	Rs. 97,500/-
Above Rs. 1,00,00,000 and upto Rs. 10,00,00,000	Rs. 3,37,500/-
Above Rs. 10,00,00,000/- and upto Rs. 20,00,00,000	Rs. 12,37,500/-
Above Rs. 20,00,00,000	Rs. 19,87,500/-

This fee will be shared equally by both the parties. Each party shall pay its share of arbitrator's fees in stages as under:

Each party shall pay its share of arbitrator's fees in stages as under:

- (i) 20% of the fees on filing of reply to the statement of claim.
- (ii) 40% of the fees on completion of pleadings.
- (iii) 20% of the fees on conclusion of the final hearing.
- (iv) 20% at the time when award is given to the parties.

5. Material on record indicates that the Ld. Arbitrator had applied for empanelment as an Arbitrator in the Petitioner/Organisation and in the application the Arbitrator had agreed to work under the fee schedule prescribed by the Petitioner/Organisation. Material on record further indicates that by an Office Order dated 30.07.2022, the name of the Ld. Arbitrator finds mention in the list of Arbitrators who have accepted to act as an Arbitrator for adjudication of disputes arose between the Petitioner/Organisation and other parties under the fee schedule prescribed



by the Petitioner/Organisation.

6. Learned Counsel appearing for the Petitioner/Organisation states that the Ld. Arbitrator is demanding the fees in accordance with the fees prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996. It is the case of the Petitioner/Organisation that once the Ld. Arbitrator has decided to act according to the fee schedule prescribed by the Petitioner/Organisation, he cannot insist on the fees to be payable under the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

7. Learned Counsel appearing for the Respondent supports the contention raised by the learned Counsel for the Petitioner/Organisation and states that the Ld. Arbitrator should be permitted to charge fees only in accordance with the fee schedule prescribed under the Arbitration Guidelines framed by the Petitioner/Organisation.

8. When a question is put before the learned Counsel for the Petitioner as to whether the present petition is maintainable at this juncture or not because Section 39(2) of the Arbitration and Conciliation Act, 1996 postulates that such a petition can be filed only when the Award is ready for pronouncement, learned Counsel for the Petitioner/Organisation draws attention of this Court to an Judgment dated 19.04.2022 passed by a Co-ordinate Bench of this Court in **O.M.P.(MISC.)(COMM.)122/2021** in the case of “McNally Bharat Engineering Company Limited vs. Steel Authority of India Limited & Anr.”. Paragraph No.30 of the said Judgment reads as under:

“30. This situation has certainly not arisen. However, in the event of McNally’s failure to pay fee as decided by the Arbitral Tribunal, recourse to Rule 28 can be taken by the ICA and proceedings would continue only



in respect of the claims and not the counter-claims. This refusal by the Tribunal to proceed on the counter-claim is akin to refusal to deliver the award except on the “payment of the cost demanded by the Tribunal”. Therefore, the Court cannot narrowly interpret or construe Section 39(2) of the Act to say that the term “delivery of award” would only be in a situation where the award is fully ready and awaits only physical delivery owing to non-payment. For all intents and purposes, this order finally determines the question of deposit of fee as demanded by the Tribunal – which has to be adjudicated upon McNally invoking Section 39(2) of the Act, if so advised. In such circumstances, the Court is not inclined to reject the said petition on the ground of maintainability.”

9. In view of the fact that the Ld. Arbitrator is charging fees beyond the agreed fees and also the fact that both the Petitioner/Organisation and the Respondent seems to be agreed to pay fees as per the Arbitration Guidelines framed by the Petitioner/Organisation, which is evident from the fact that the learned Counsel for the Respondent has stated that he has no objection of the present petition is allowed, this Court is inclined to direct the Ld. Arbitrator to charge fees only in accordance with the fee schedule prescribed under the Arbitration Guidelines framed by the Petitioner/Organisation which has also been agreed to by the Ld. Arbitrator.

10. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 17, 2025

S. Zakir