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

+ **ARB.P. 504/2025**

M/S JAGTAJI INFRASTRUCTURE

.....Petitioner

Through: Mr. S.W. Haider and Ms. Pooja Dua,
Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Balendu Shekhar, CGSC with
Mr. Krishna Chaitanya, Ms. Tanisha Samanta and
Mr. Rajkumar Maurya, Advocates for UOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

25.03.2025

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1. Present petition has been filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation, 1996 ('1996 Act') for appointment of an Arbitrator to adjudicate the disputes between the parties.
2. Disputes between the parties have arisen pertaining to work "*Cess repair work at Km 1301 to 1305DN, 1321 to 1323 DN, 1285.5 to 1285.8 DN, 1291.5 to 1293 DN, 1 to 2.83 SRYC Link Line, 1291.4 to 1293 UP, 1302 to 1303.7 UP, 1305.3 to 1307.4 UP, 1311.4 to 1313 UP, 1314 to 1315.2 UP, 1316.6 to 1320.4 UP and 1328.17 to 1330 UP in the section of ADEN/BE*", awarded to the Petitioner vide Acceptance Letter dated 05.02.2021 for a sum of Rs.1,21,52,590.36. Stipulated Date of Completion of work was three months i.e. work was to be completed by 04.05.2021.
3. Petitioner states that the contract agreement was executed by the Respondent only on 08.10.2021 and therefore, the Stipulated Date of



Completion lost its significance. Despite Petitioner making all arrangements for timely execution of the work, Respondent extended the work from time to time and upto 15.06.2022, as it was aware that the delay was attributable to the Respondent, on account of absence of work front and non-availability of site etc.

4. Petitioner avers that Respondent did not show any seriousness to have the work completed on time and to show its *bona fide*, Petitioner vide letter dated 29.11.2022 requested either for making the complete work front available or to close the work on administrative ground, but no heed was paid and vide letter dated 16.12.2022, Petitioner requested for closure of the contract and payment of outstanding dues, but even to this letter there was no response. Several communications thereafter were not responded to by the Respondent and finally, Petitioner invoked the Arbitration Clause 64 of the General Conditions of the Contract, 2020 ('GCC') vide letter dated 30.11.2024 and sought appointment of an Arbitral Tribunal. Pursuant to the invocation, Respondent sent a reply dated 10.12.2024 asking the Petitioner for a waiver under Section 12(5) of the 1996 Act, which Petitioner declined to give.

5. By letter dated 20.01.2025, Respondent furnished names of 4 retired Railway officials and asked the Petitioner to suggest two names therefrom, out of which one was to be appointed as Petitioner's nominee. It was also indicated that in case the Petitioner failed to suggest the two names, the demand for arbitration will be deemed to be waived. Petitioner avers that faced with this situation and *bonafidely*, Petitioner vide letter dated 24.01.2025 suggested two names from the panel of four names sent to it and by a letter dated 10.02.2025, Arbitral Tribunal was constituted comprising of



three retired Railway officials, who gave their disclosures in terms of Schedule of the 1996 Act. However, Petitioner realised that the constitution of the Arbitral Tribunal was illegal and in teeth of the judgment of the Supreme Court in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 SCC OnLine SC 3219***, wherein the Supreme Court has held that mandating selection of arbitrators solely from a panel curated by one party is contrary to principles of natural justice and equal treatment under Section 18 of the 1996 Act and consequently raised an objection to the appointment of the Tribunal vide letter dated 08.01.2025. Respondent, however, vide letter dated 21.01.2025 insisted in continuing with the Arbitral Tribunal, compelling the Petitioner to file the present petition.

6. Issue notice.

7. Mr. Balendu Shekhar, learned CGSC accepts notice on behalf of the Respondent.

8. Learned CGSC for the Respondent submits that there is no infirmity in appointing the Arbitral Tribunal as per Clause 64 of GCC and party autonomy is saved by the mere fact that Petitioner was asked to choose two retired officials from the panel of four and out of the two, one is the Petitioner's nominee. He, however, does not object to appointment of sole arbitrator by the Court in light of the judgment of the Supreme Court in ***Central Organisation for Railway Electrification (supra)***.

9. After hearing learned counsels for the parties, this Court finds merit in the contention of the Petitioner that the exercise undertaken by the Respondent to mandate the selection of arbitrators from a panel curated by the Respondent is contrary to the observations in ***Central Organisation for***



Railway Electrification (supra), wherein the Supreme Court observed that since the curation of the list is exclusively undertaken by one party, the other party is effectively excluded from the process of curating the panel from which exclusively, appointment of arbitrator is to be made. Other party has to mandatorily select its arbitrator from a curated panel, restricting its freedom to appoint an arbitrator of its choice. This is against the principles of equal treatment contained under Section 18 of the 1996 Act. In this situation, there is no effective counterbalance because both parties do not participate equally in the process of appointment. Party curating the panel restricts the choice of other party only to a person who is in the panel selected by the other party and to no other person. This also raises reasonable doubt in the mind of a fair minded person. As rightly argued by counsel for the Petitioner, unilateral appointment of an arbitrator is antithesis to party autonomy and independence of arbitrator, which are the hallmarks of arbitration mechanism and in this context, I may allude to the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547.

10. Accordingly, the present petition is disposed of with the following directions:—

- i) The disputes between the parties are referred for arbitration before a Sole Arbitrator namely, Ms. Jyoti Dutt Sharma, Advocate (Mob: 9891077497), with the consent of the parties.
- ii) The learned Arbitrator shall furnish a declaration in terms of Section 12 of the 1996 Act prior to entering into reference.



- iii) Fee of the learned Arbitrator will be in accordance with Fourth Schedule of the 1996 Act.
- iv) It is made clear that all rights and contentions of the parties in relation to the merits of their claims/counter claims are left open for adjudication by the learned arbitrator and that this Court has not expressed any opinion on the merits of the case.
- v) Parties shall approach the learned sole Arbitrator within four weeks from today.

11. Since this Court has appointed a sole Arbitrator for adjudication of the *inter se* disputes, mandate of the existing Arbitral Tribunal constituted by the Respondent stands terminated.

JYOTI SINGH, J

MARCH 25, 2025/shivam