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

+ ARB.P. 551/2025

SUDHIR KUMAR GUPTA PARTNER OF MS TRILOK CHAND
GUPTA AND COMPANYPetitioner

Through: Mr. Anurag Ojha and Mr. Vipul
Kumar, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Santosh Kumar, Standing
Counsel with Ms. Dharitri Phookan and Ms. Nidhi
Rani, Advocates.

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+ ARB.P. 552/2025

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CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **28.05.2025**

I.A. 7879/2025 in ARB.P. 551/2025

I.A. 7881/2025 in ARB.P. 552/2025

1. These applications have been filed on behalf of the Petitioner under Section 5 of the Limitation Act, 1963 for condonation of delay of 42 days in re-filing the petitions.
2. For the reasons stated in the applications, the same are allowed. Delay



of 42 days in re-filing the petitions stands condoned.

3. Applications are disposed of.

ARB.P. 551/2025 & ARB.P. 552/2025

4. These petitions are filed on behalf of the Petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

5. ARB.P. 551/2025 is in respect of disputes arising out of an Agreement dated 03.10.2007 executed between M/s Trilok Chand Gupta and Company through its partner Sudhir Kumar Gupta and NHAI. According to the petitioner, a total amount of Rs. 37,83,43,369/- approximately is recoverable from NHAI with interest. Petitioner invoked the Arbitration Clause 25.3 of the Agreement and sent a notice dated 31.05.2023 for appointment of a Sole Arbitrator, under Section 21 of 1996 Act, calling upon NHAI to appoint an Arbitrator, but to no avail.

6. ARB.P. 552/2025 is in respect of disputes arising out of an Agreement dated 17.12.2007 executed between M/s Trilok Chand Gupta and Company through its partner Sudhir Kumar Gupta and NHAI. According to the petitioner, a total amount of Rs. 6,10,55,080.75/- approximately is recoverable from NHAI with interest. Petitioner invoked the Arbitration Clause 25.3 of the Agreement and sent a notice dated 31.05.2023 for appointment of a Sole Arbitrator, under Section 21 of 1996 Act, calling upon NHAI to appoint an Arbitrator, but to no avail.

7. Mr. Santosh Kumar, learned Standing Counsel appearing on behalf of NHAI, on instructions, fairly does not dispute the existence of the Arbitration Agreement and proposes the name of Mr. Justice S. J. Vazifdar,



former Chief Justice of Punjab and Haryana High Court, as NHAI's nominee Arbitrator. Leaned counsel for the Petitioner proposes the name of Shri M.K. Aggarwal, Engineer-in-Chief (Retd.) as his nominee Arbitrator. Both parties have no objection to the two nominee Arbitrators being appointed.

8. The Arbitration Clause 25.3 incorporated in the Agreements in question is as follows:-

“ 25.3 ARBITRATION (GCC Clause 25.3)

The procedure for arbitration will be as follows”

- a. In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such dispute or difference shall be settled in accordance with the arbitration and conciliation act, 1996. The arbitral tribunal shall consist of 3 arbitrator one each to be appointed by the employer and the contractor. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the council of Indian Road Congress.*
- b. If one of the parties fails to appoint its arbitrator in pursuance of sub clause (a) and (b) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the council of Indian Road Congress shall appoint the arbitrator. A Certified copy of the order of the council of Indian Road Congress making such an appointment shall be furnished to each of the parties.*
- c. Arbitration proceeding shall be held at New Delhi, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.*
- d. The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of arbitration proceedings will be in accordance with the fees structure stated in NHAI policy circular no. Admn./Finance (125/2006) dated 02.08.2006 and the signing of the contract shall be the acceptance of the above fee structure by both the parties. However, the expenses incurred by each party in connection with the preparation presentation, etc. of its proceedings shall be borne by each party itself.*
- e. Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld unless they are the subject matter of the arbitration proceeding.*



f. Significantly, no suggestion/consent was given for the appointment of arbitrator. Precisely for this reason, the petitioner has preferred the present petition for the appointment of the arbitration who can adjudicate the present dispute between the parties.”

9. The existence of Arbitration Agreement is beyond dispute between the parties. Arbitration Clause 25.3 envisages disputes and differences arising out of the Agreements being referred to a three member Arbitral Tribunal, where one Arbitrator each will be nominated by the employer and the contractor and the third Arbitrator shall be chosen by two Arbitrators appointed by this parties and shall act as the Presiding Arbitrator.

10. In view of the Arbitration Clause and with the consent of the parties, Mr. Justice S. J. Vazifdar, former Chief Justice of Punjab and Haryana High Court, is appointed as nominee Arbitrator of the Petitioner and Shri M.K. Aggarwal, Engineer-in-Chief (Retd.) is appointed as nominee Arbitrator of NHAI. Both the learned Arbitrators shall appoint the third Arbitrator, who shall act as the Presiding Arbitrator.

11. Fee of the Arbitrators shall be fixed as per Fourth Schedule of 1996 Act.

12. Learned Arbitrators shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

13. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

14. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 28, 2025

S.Sharma