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

+ **O.M.P. (T) (COMM.) 28/2025**

VADODARA MUMBAI EXPRESSWAY PKG 09 PRIVATE LIMITEDPetitioner

Through: Mr. Samir Malik, Mr. Varun Kalra
and Mr. Krishan Kumar, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIARespondent

Through: Ms. Madhu Sweta and Mr. Yash
Kapoor, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

08.04.2025

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I.A. 9163/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This petition is preferred on behalf of the Petitioner under Section 15(2) read with Section 14 of the Arbitration and Conciliation Act, 1996 ('1996 Act') for substitution of the learned Presiding Arbitrator of the Arbitral Tribunal, on account of untimely demise of Mr. Justice Tarun Agarwal, former Chief Justice of Meghalaya High Court.
4. Disputes between the parties emanated out of a Concession Agreement dated 01.11.2021 pertaining to *Construction of an Eight-lane access controlled Expressway from km128.000 to km 154.600 of Vadodara*



Mumbai Expressway (Karvad to Juhuwa section) in the state of Gujarat on Hybrid Annuity mode under Bharatmala Pariyojna (Phase 1-Package IX). Petitioner invoked arbitration clause 38.3 of the Concession Agreement vide notice dated 07.08.2023 and on failure of the Respondent to appoint its nominee Arbitrator, filed Arb. Pet. No. 785/2023 before this Court for appointment of all three Members of the Arbitral Tribunal.

5. It is stated in the petition that during pendency of the petition filed under Section 11(6) of the 1996 Act, both Petitioner and Respondent appointed their respective nominee Arbitrators and therefore jointly prayed before this Court to appoint the Presiding Arbitrator. By order dated 29.02.2024, Arb. Pet. 785/2023 was disposed of appointing Mr. Justice Tarun Agarwal (Retd.) as the Presiding Arbitrator.

6. Cause of action for filing the present petition has arisen on account of the untimely demise of Mr. Justice Tarun Agarwal, former Chief Justice of Meghalaya High Court, while the arbitration proceedings are still pending at the stage of final arguments.

7. Issue notice.

8. Ms. Madhu Sweta, learned counsel accepts notice on behalf of the Respondent and does not object to a substitute Presiding Arbitrator of the Arbitral Tribunal being appointed but submits that the Arbitrator be appointed from the panel maintained by SAROD. Learned counsel for the Petitioner objects to the appointment from the panel maintained by SAROD and submits that this Court may appoint the Presiding Arbitrator as was done in the earlier round of litigation.

9. Considering that the arbitration proceedings are at the fag end and final arguments have to be heard and the Presiding Arbitrator appointed by



this Court has unfortunately expired, this Court finds no impediment in appointing the Presiding Arbitrator of the Arbitral Tribunal. Accordingly, Hon'ble Ms. Justice Hima Kohli, former Judge of the Supreme Court (Mobile No. 9871300036) is appointed as the Presiding Arbitrator of the Arbitral Tribunal. The Arbitral Tribunal shall proceed from the stage the proceedings are currently pending.

10. Learned Presiding Arbitrator shall give a disclosure under Section 12 of the 1996 Act before proceeding further. It is open to the learned Arbitrator and the parties to fix the fee of the Presiding Arbitrator by mutual consent.

11. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 8, 2025
S.Sharma/shivam