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

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+ ARB.P. 623/2025
NTPC LIMITED

.....Petitioner

Through: Mr. Sudhanshu Prakash, Ms. Anisha
Agarwal and Mr. Vaibhav Sabharwal, Advocates.

versus

M/S BKB TRANSPORT PVT. LTD.

.....Respondent

Through: Mr. Sumeet Gadaodia, Mr. Kaushik
Poddar and Mr. Akash Dalal, Advocates.

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+ ARB.P. 685/2025
BKB TRANSPORT PVT LIMITED

.....Petitioner

Through: Mr. Sumeet Gadaodia, Mr. Kaushik
Poddar and Mr. Akash Dalal, Advocates.

versus

NTPC LTD

.....Respondent

Through: Mr. Sudhanshu Prakash, Ms. Anisha
Agarwal and Mr. Vaibhav Sabharwal, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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02.05.2025

I.A. 9467/2025 (Exemption) in ARB.P. 623/2025

I.A. 10990/2025 (Exemption) in ARB.P. 685/2025

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.



ARB.P. 685/2025 and ARB.P. 623/2025

3. ARB.P. 623/2025 is preferred on behalf of NTPC Limited ('NTPC') under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

4. ARB.P. 685/2025 is preferred by M/s B.K.B. Transport Private Limited ('BKB') under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

5. On 23.05.2022, NTPC issued an open Tender through NIT dated 23.05.2022 for '*Transportation of 2.4 LMT of Coal from AKK OCP Siding of CCL to Bokaro/Dugda Railway Goods Shed under RCR mode*'. The Contract was awarded to BKB, while Purchase Order dated 31.07.2022 for a total value of Rs. 53,520,000.00/-. On 14.11.2022, parties entered into an Agreement, Clause 2.0 of which provided that Contract shall be performed strictly as per terms and conditions stipulated in the Contract Agreement, Contract documents and Purchase Order together with amendments. On 03.02.2023, Purchase Order was amended providing extension in completion period upto 31.03.2023, without prejudice to the rights of NTPC to levy Liquidated Damages. Even subsequent thereto, there was an amendment to the Purchase Order.

6. However, disputes arose between the parties. BKB contends that it completed coal transportation as per Purchase Order and raised bills amounting to Rs. 6,28,14,589.75/- but NTPC illegally withheld the same and also erroneously retained the EMD of Rs. 50 lacs and encashed Bank Guarantee in the sum of Rs. 16,05,600/- as also imposed a penalty of Rs.



13,42,02,315.02/- . Reconciliation attempts failed and BKB invoked Arbitration Clause 7.3 of General Conditions of Contract on 03.10.2024 seeking appointment of a Sole Arbitrator. Respondent, however, vide letter dated 10.01.2025, sought Petitioner's consent for appointment of three member Arbitral Tribunal contrary to the Arbitration Agreement.

7. NTPC, *per contra* , claims that during the Contract, it communicated to BKB on several occasions that there was huge deviation in the quality and quantity of the coal received and the amounts on account of the said grade slippage and transit loss, which BKB became liable to pay to NTPC, surpassed the Contract value and BKB is liable to pay a total amount of Rs. 20,24,56,127.95/- to NTPC. NTPC invoked Arbitration Clause 7.3 in GCC and sought consent of BKB to refer the disputes to arbitration of an independent Sole Arbitrator as it did not agree with the Arbitrator proposed by BKB. It is in this backdrop, that both petitions came to be filed in this Court.

8. Issue notice in ARB.P. 685/2025.

9. Mr. Sudhanshu Prakash, learned counsel accepts notice on behalf of NTPC and Mr. Sumeet Gadaodia, learned counsel accepts notice on behalf of BKB in ARB.P. 623/2025.

10. Learned counsels for the respective parties candidly submit that Clause 7.3 of GCC is the governing Arbitration Clause and thus, there is no dispute on the existence of Arbitration Agreement for reference of disputes to arbitration and the Court may appoint a Sole Arbitrator, but the proceedings be conducted under the aegis of Delhi International Arbitration Centre ('DIAC') and as per its Rules.

11. Accordingly, with the consent of the parties, Mr. Justice Chander



Shekhar, former Judge of this Court (Mobile No. 9910384650) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitration proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be fixed as per fee schedule of DIAC Rules 2018.

12. Learned Arbitrator 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. It is left open to the parties to file their claims and/or counter-claims, if any, before the learned Arbitrator.

15. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 02, 2025/RW