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

+ **ARB.P. 831/2025**

M.D. ESTHAPPAN INFRASTRUCTURE (P) LTDPetitioner

Through: Mr. John Mathew, Advocate.

versus

GAIL (INDIA) LIMITED & ANR.Respondents

Through: Mr. Nishant Awana, Ms. Rini Badoni
and Ms. Nitya Sharma, Advocates with Mr. Navjot
Singh, Chief Manager for Respondent-1.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.05.2025

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1. This petition is filed on behalf of the Petitioner under Section 11(6) read with Section 15(2) of Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a substitute Arbitrator in light of the fact that the learned Sole Arbitrator nominated by the Petitioner has expressed her inability to proceed with the arbitration.

2. Petitioner is an MSME Company engaged in infrastructure, construction works and works related to civil engineering. Respondent No. 1 is a Natural Gas Company dealing in LPG production and transmission, LNG regasification etc. Respondent No. 2/MECON Limited, a Government of India Enterprise, on behalf of GAIL invited Tender for construction of terminal works of Kochi to Mangalore Pipeline KKBMP-Phase II Project II Part B.



3. It is averred in the petition that Petitioner submitted its offer on 14.07.2018 for the aforesaid work and by communication dated 16.10.2018, Petitioner was informed that work had been awarded to the Petitioner at the stated estimated contract value. On 19.02.2019, Respondent No. 1 issued Letter of Acceptance and a formal Contract Agreement was signed on 12.03.2019, between the Petitioner and Respondent No. 1.

4. Petitioner further avers that various payments towards electrical and instrumentation items, retention amounts, withheld bill amounts, value of work executed and the final bill were withheld by Respondent No. 1, as a result of which, the execution of the project was derailed. In fact, even the location site was handed over belatedly and the situation worsened due to Pandemic COVID-19, leading to *Force Majeure* conditions. In light of the various disputes, Petitioner invoked Arbitration Clause-59 contained in Special Conditions of Contract and sent a notice dated 03.12.2024 under Section 21 of 1996 Act for appointment of a Sole Arbitrator. By its reply dated 02.01.2025, Respondent No. 1 denied the claims, but proposed the names of three former Judges of the Supreme Court on the panel of Delhi International Arbitration Centre (DIAC) to act as Sole Arbitrator. In response, Petitioner accepted one of the names and intimation was sent to the learned Arbitrator. However, on 13.03.2025, the date of preliminary hearing, learned Arbitrator expressed her inability to proceed with the arbitration and recused from the matter. Faced with this, Petitioner sent an invocation notice dated 16.04.2025 to Respondent No. 1 for appointment of a substitute Arbitrator, but there was no response and Petitioner had no option but to file the present petition.

5. Issue notice.



6. Mr. Nishant Awana, learned counsel accepts notice on behalf of the Respondent No. 1, the contesting party and on instructions, submits that Respondent No. 1 has no objection to appointment of a substitute Arbitrator in the given facts. Be it noted that both the counsels propose the name of Mr. Justice L. Nageswara Rao, former Judge of the Supreme Court of India as the Sole Arbitrator.
7. Accordingly, with the consent of the parties, Mr. Justice L. Nageswara Rao, former Judge of the Supreme Court of India (Mobile No. 9810035984) is appointed as substitute Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.
8. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.
9. 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.
10. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 28, 2025
S.Sharma