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

+ **ARB.P. 1589/2024**

M/S RSBIPL-AGC JV

.....Petitioner

Through: Mr. Abhijit Mittal, Mr. Anukalp Jain,
Adv.

Versus

UNION OF INDIA

.....Respondent

Through: Mr. Santosh Kumar, SC with Mr.
Kartik Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH
ORDER
04.04.2025

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1. This is a petition filed under section 11(5) and (6) of Arbitration and Conciliation Act, 1996 seeking appointment of arbitrator for adjudication of dispute of between the parties.
2. In the present case, the petitioner is a Joint Venture Company and the respondent is the NHAI. The respondent invited tenders for development, maintenance and management of National Highway No. 754K. The petitioner being the L1 bidder was granted Letter of Acceptance *vide* EPC Agreement dated 07.01.2020. The said Agreement contains arbitration clause being clause No. 26.3 which reads as under:-



26.3 Arbitration

- (i) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally settled by arbitration in accordance with the rules of arbitration of the Society For Affordable Redressal Of Disputes (SAROD).
- (ii) The parties expressly agree as under in case of arbitration of disputes:
 - (a) There shall be no arbitration for a dispute involving a claim value upto INR 50 Lakh (INR fifty lakh). The Authority's Engineer shall give a reasoned decision in case of such dispute and the same shall be binding on both the parties.
 - (b) In case of a dispute involving claim value of above INR 50 Lakh (INR fifty lakh), but upto INR 50 Crore (INR fifty crore), the same shall be referred to a Sole Arbitrator. Authority shall within 30 (thirty) days propose names of 5 (five) Arbitrators from the list of Arbitrators maintained by SAROD (Society for Affordable Redressal of Disputes) and the Contractor shall within 30 (thirty) days select one name from the list of five and the name so selected by the Contractor shall be the Sole Arbitrator for the matter in dispute. In case Authority delays in providing the list of 5 (five) names, President, SAROD will provide 5 names within 30 (thirty) days of receipt of reference from aggrieved party in this regard. In case the Contractor fails in selecting one from the list of five, President, SAROD shall select one from the list of five provided by Authority within 30 (thirty) days of receipt of reference from aggrieved party in this regard.
 - (c) In case of a dispute involving a claim value of more than INR 50 Crore (INR fifty crore), the same shall be referred to an Arbitral Tribunal comprising 3 (three) Arbitrators. The Dispute shall be settled in accordance with the rules of Arbitration of the Society for Affordable Redressal of Disputes (SAROD).
 - (d) The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
 - (e) The fees of the Arbitrators shall be as per the rates fixed by the Authority from time to time. The cost of arbitration shall be shared equally by the parties.



- (f) Neither Party shall be entitled for any pre-reference or pendent lite interest, i.e., interest from date of cause of action till date of Award by Arbitral Tribunal. The parties specifically agree that claim for any such interest shall not be considered and shall be void. The Arbitrator or Arbitral Tribunal shall have no power/ jurisdiction to award pre-reference or pendent lite interest in case of disputes.
- (iii) The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.
- (iv) The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.
- (v) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.
- (vi) In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.



3. The petitioner completed the invocation mechanism and subsequently issued notice under Section 21 on 31.08.2024. Thereafter, the present petition has been filed.
4. Mr. Kumar, learned Standing Counsel for the respondent has no objection to the sole arbitrator being appointed.
5. With consent of parties, the petition is allowed and the following directions are issued:-
 - i) Mr. Justice G.S. Sistani (Retired Judge Delhi High Court) (Mob. No. 9871300034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
 - iii) The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two



weeks from today.

6. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

APRIL 4, 2025 / (MS)

Click here to check corrigendum, if any