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

+ **ARB.P. 1830/2025**

**SAMKHALI BHACHAU GANDHIDHAM TOLLWAY PRIVATE
LIMITED**

.....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate
with Ms. Mumtaz Bhalla and Ms.
Simran Kaur, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Respondent

Through: Mr. Rishi Kumar Awasthi, Mr. Amit
Vikram, Mr. Awasthi, Ms. Ritu
Arora, and Mr. Rahul Raj Mishra,
Advs.

Ms. Astha Sehgal, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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10.11.2025

1. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") is filed by the Petitioner seeking appointment of the Presiding Arbitrator to adjudicate upon the disputes between the parties arising out of a Concession Agreement dated 17.03.2010 read with Supplementary Agreement dated 11.03.2016.

2. It is stated that the Petitioner and the Respondent herein entered into a Concession Agreement dated 17.03.2010 for the Six-Laning of Samakhiali-Gandhidham Section of NH-8 in the State of Gujarat on Built, Operate & Transfer (Toll) on Design, Build, Finance and Operate Pattern for a period



of 24 years from, i.e. from 11.09.2010 till 10.09.2034.

3. It is stated that the parties entered into a Supplementary Agreement dated 11.03.2016, wherein Article 44.3 of the Concession Agreement, which contains the Arbitration Clause, was amended and it was agreed between the parties that any disputes, differences or controversies between the parties would be referred to arbitration in accordance with Society for Affordable Redressal of Arbitration Rules Disputes (“**SAROD Rules**”). Article 44.3 of the Concession Agreement dated 17.03.2010, reads as under:

“44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

44.3.2. There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules

44.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and



the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

44.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

44.3.5 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.

44.4 Adjudication by Regulatory Authority or Commission”

4. Amended Clause 44.3 of the Concession Agreement under Supplementary Agreement dated 11.03.2016, reads as under:

“1. That the Clause 44.3 of the Concession Agreement is hereby amended to be read as follows:-

“Any dispute/difference arising out of aforesaid Concession Agreement which is not resolved amicably as provided in Clause 44.2 shall be finally settled by Arbitration as set forth below:-

(i) The dispute shall be referred to SAROD for resolution by Arbitration in accordance with Rules of SAROD and Arbitration and Conciliation Act 1996 as amended from time to time. Party shall choose the Arbitrators from the panel of Arbitrators empaneled by the SAROD. The Arbitral Tribunal shall consist of Sole Arbitrator in case total claim of dispute is Rs. 3 Crores or less and in case the disputed claim is more than Rs. 3 Crores, the Tribunal shall consist of odd number of Arbitrators to be nominated by the Parties. The Presiding Arbitrator shall be appointed by the



Arbitrators nominated by the Parties in terms of Rule 11.2 of SAROD. Further, the terms of appointment of Arbitrators shall be governed by Rule 11.3 to Rule 11.5, 12.1, 12.2 and 13 of SAROD.

(ii) The Arbitral proceeding shall be held at Delhi (India) and the language of Arbitral proceeding and that of all correspondence between the Parties shall be in English.

(iii) While the crucial law of proceedings shall be Rules of the SAROD and various provisions of Arbitration and Conciliation Act 1996, the dispute shall be governed by substantive law of India eg. The Indian Contract Act 1872 and Arbitration and Conciliation Act 1996, National Highways Act 1956 etc.

(iv) Code of Ethics for Arbitrators shall be governed by Rule 15 of SAROD

(v) Fee of Arbitrators and expenses incurred in the Arbitration proceeding shall be shared by the Parties in equal proportion in terms of Rule 15.10 of SAROD

(vi) All procedural aspects in Arbitration proceeding shall be conducted in terms of the Rules of SAROD.

(vii) The parties shall respect the award in letter and spirit and the award shall be binding upon the Parties, unless the Parties invoke the Section 34 of the Arbitration and Conciliation. Act 1996 for challenging award.””

4. It is stated that disputes arose between the parties regarding the calculation of Actual Average Traffic and the application of the relevant Passenger Car Unit factors, following which the Respondent vide letter



dated 07.12.2024 reduced the concession period of the Petitioner herein by 2 years, 4 months and 24 days, which, according to the Petitioner is *de hors* the Concession Agreement.

5. It is stated that the Petitioner herein sent a Notice of Dispute dated 16.06.2025 to the Respondent under Article 44.2 of the Concession Agreement, requesting for a meeting for Conciliation. It is stated that a conciliation meeting was held between the parties on 07.07.2025, but the dispute could not be settled.

6. It is stated that the Petitioner herein sent a notice dated 28.07.2025 invoking arbitration as per Section 21 of the Arbitration Act for adjudication of the disputes between the parties. The Petitioner herein nominated Justice Talwant Singh (Retd.), former Judge of this Court, as its nominee arbitrator for the constitution of a three-member tribunal as per the Concession Agreement. It is stated that *vide* letter dated 27.08.2025, the Respondent herein nominated Justice Sakha Ram Singh (Retd.), former Judge, High Court of Judicature at Allahabad, as its nominee arbitrator. It is stated that since the Nominee Arbitrators failed to appoint the Presiding Arbitrator, the SAROD Rules *vide* email dated 08.10.2025, informed the parties that a Presiding Arbitrator would be appointed in accordance with Rule 11.5 of the SAROD Rules by a draw of lots from a panel of arbitrators maintained by SAROD. Rule 11.5 of the SAROD Rules, which is relevant for the present case, reads as under:-

“11.5 In the event of any Party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.”



7. Rule 11.2 of the SAROD Rules, which is also relevant for this case, reads as under:-

“11.2 In all cases of disputes claimed for more than ₹ 3,00,00,000/- (₹ Three Crores), the tribunal shall consist of odd number of Arbitrators to be nominated by the Parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the Parties from amongst the panel maintained by SAROD. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties. The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.”

5. It is stated that on 16.10.2025, SAROD conducted a draw of lots and appointed Justice Shailender Saksena (Retd.), former Judge, High Court of Judicature at Allahabad as the Presiding Arbitrator. It is the case of the Petitioner that this appointment is in violation of Rule 11.2 of the SAROD Rules as the name of Justice Shailender Saksena (Retd.), was not suggested by the Arbitrators nominated by the Parties.

6. The Petitioner has, thereafter, approached this Court by filing the present Petition for appointment of the Presiding Officer to adjudicate upon the disputes between the parties.

7. Notice in the present Petition was issued on 04.11.2025.

8. Learned Senior Counsel appearing for the Petitioner submits that since both the nominee Arbitrators have failed to arrive at a consensus for appointment of a Presiding Arbitrator, this Court exercising its powers under Section 11 of the Arbitration Act can appoint a Presiding Arbitrator.



9. *Per contra*, learned Counsel appearing for the Respondent, who appears on advance notice, vehemently opposes the present Petition and submits that Rule 11.2 of the SAROD Rules would apply only when both the nominee arbitrators give their respective names for appointment of the Arbitrator and since no such suggestion was given, SAROD continues to have the power to appoint the Presiding Arbitrator under Rule 11.5 of the SAROD Rules.

10. In order to resolve the controversy, this Court gave two alternative suggestions to the respective learned counsels for the parties. The first suggestion put forth by this Court was that the Petitioner and Respondent would suggest their respective names for the Presiding Arbitrator, subsequent to which SAROD would select one name by draw of lots. The second alternative given by this Court was that with the consent of SAROD, who was impleaded as Respondent No. 2 in the present Petition, this Court could appoint the Presiding Arbitrator from the SAROD's list of empaneled Arbitrators.

11. Faced with the above, learned Senior Counsel for the Petitioner has fairly suggested the name of Justice Talwant Singh (Retd.), former Judge of this Court, to be appointed as a member of the Arbitral Tribunal, while the learned Counsel for the Respondent has suggested the name of Justice Sakha Ram Singh (Retd.), Former Judge High Court of Judicature at Allahabad, as the other member of the Arbitral Tribunal.

12. In view of the fact that disputes have arisen between the Parties and there is an arbitration clause which states that in case of a dispute involving claim value of above Rupees Three Crores, the same shall be referred to an Arbitral Tribunal comprising of odd number of arbitrators and out of the



three members, two members have already been nominated by the parties, this Court, with the consent of both the parties, is inclined to appoint Justice Indu Malhotra (Retd.), former Judge of the Supreme Court of India (Mob. No.9810026757), as the Presiding Arbitrator of the Arbitral Tribunal to adjudicate upon the disputes between the parties.

13. The fee of Arbitrators and expenses incurred in the Arbitration proceeding shall be shared by the Parties in equal proportion in terms of Rule 15.10 of SAROD Rules.

14. The Arbitral Tribunal is also requested to file the requisite disclosure as per Section 12(2) of the Arbitration Act within a week of entering on reference.

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the Tribunal on their merits, in accordance with law.

16. Needless to state, the foregoing Order is passed only to circumvent all the legal arguments advanced on behalf of the parties and to ensure that the Arbitral Tribunal is constituted at the earliest for adjudication of disputes, which is in line with the purpose of the Arbitration Act. It is made clear that this Court has not made any observations on the contentions of conduct of any parties and all the questions of law are left open for the parties to be advanced before the Arbitral Tribunal so constituted.

17. The present petition stands disposed of in the above terms, along with pending applications, if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 10, 2025/Rahul