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

+ ARB.P. 1937/2024

JCL INFRA PVT LTD

.....Petitioner

Through: Mr. Faiyaz Hasan, Advocate
(Through VC)

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Farman Ali, SPC with Ms. Usha
Jamnal, Mr. Dhruv Arora and Mr.
Raghuvir Singh, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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17.03.2025

1. With the consent of the parties both the petitions can be taken up together and disposed of by this common order.
2. This is a petition filed under Section 11(6) of the Arbitration and



Conciliation Act, 1990 ('Act of 1990') for seeking appointment of an Arbitral Tribunals comprising of a sole arbitrator, to adjudicate the disputes between the parties.

3. It is stated in the petitions that the disputes between the parties have arisen with respect to purchase order No. 187- S/3 13/CAO/C/P.way/2002-2003 dated 18.06.2003, which is subject matter of ARB.P. 1937/2024; and Purchase Order No. 50-12-2038-1-50963-36 dated 25.02.2014 which is subject matter of ARB.P. 1938/2024.

4. Learned counsel for the Petitioner states that both the purchase orders are co-terminus and the arbitration clause is under Clause 2900 of the Settlement of Disputes-Indian Railway Standard Condition of Contract, which is applicable to the present purchase orders which reads as under:

“2900. Arbitration.

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal-Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the



outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if/for any reason that is not possible, the matter is not to be referred to arbitration at all.

(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1996 and the rules thereunder and any statutory modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”

5. He states in order to avoid conflict of judgment it would be in the interest of the parties that the same Tribunal is appointed to adjudicate disputes under both the purchase orders. He states that the amount involved in ARB.P. 1937/2024 is approximately Rs. 7 lakhs and the amount involved in ARB.P. 1938/2024 is approximately Rs. 31 lakhs and therefore, an Advocate may be appointed as an Arbitrator. He states that in view of the judgment of Supreme Court in **Central Organization for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture**



Company¹ the employee of the Respondent is disqualified for acting as an arbitrator.

6. Mr. Farman Ali, SPC has entered appearance on behalf of Respondent Nos. 1 and 2. He states that Respondent does not dispute the existence of the arbitration agreement.

7. He states that the Respondents has no objection to the appointment of a neutral arbitrator by this Court in view of the law laid down by the Supreme Court in **Perkins Eastman Architects DPC and Ors. v. HSCC (India) Ltd**² and **Central Organization for Railway Electrification** (supra). He states that he has instructions to state that considering the quantum of the amount in dispute an Advocate can be appointed to adjudicate the matter and the same can be placed under the aegis of Delhi International Arbitration Centre ('DIAC').

8. In view of the judgment of the Supreme Court in **Central Organization for Railway Electrification** (supra) this Court is satisfied that the Respondent cannot insist on appointment of its employee as an arbitrator. This Court also takes note of the submissions of the parties that they are agreeable to conduct the arbitration under the aegis of DIAC. In these facts, since there is no dispute with respect to existence of an arbitration agreement, this Court deems it appropriate to appoint an advocate as an arbitrator in both these arbitration petitions.

9. In view of the above, the disputes between the parties under the said purchase orders are referred to the common arbitral tribunal with the following directions:

¹ 2024 INSC 857

² (2020) 20 SCC 760



- a) Mr. Sanjeev Tyagi, Advocate (D-240/1997) (Mob. No. 9811252685; E-mail: sanjeevktiyagiadv@gmail.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties in both ARB.P. 1937/2024 and ARB.P. 1938/2024.
 - b) The arbitration will be held under the aegis of the DIAC. The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the Act of 1990.
 - c) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act before entering into the reference.
 - d) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - e) The DIAC is directed to register two separate cases.
10. The Petitioner is directed to file its statement of claim in both the matters separately within four (4) weeks.
11. List the matter before the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi on **05.05.2025** to be presided over by the sole arbitrator.
12. With the aforesaid direction, the petition stands disposed of.
13. The registry is directed to send a copy of this order to Secretary, DIAC and the Sole Arbitrator.
14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No



physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
MARCH 17, 2025/rhc/AKT