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

+ **ARB.P. 1952/2024**

**KCC TALGAON KALMATH HIGHWAYS PRIVATE
LTD**

.....Petitioner

Through: Mr. Sanjeev Kumar, Mr. Abhishek Kisku, Mr. Anshul Sehgal, Mr. Pranshu Paul and Mr. Divyanshu Jain, Advocates.

versus

**MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVERNMENT OF INDIA, THROUGH CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT, GOVERNMENT OF
MAHARASHTRA**

.....Respondent

Through: Mr. Abhishek Gupta, CGSC with Mr. Abhinav Jha and Mr. Rajeev Kumar Yadav, Advocates.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER
15.04.2025**

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1. This petition is preferred on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for constituting the three member Arbitral Tribunal in terms of Article 38.3 of Concession Agreement dated 09.02.2017.
2. It is the case of the Petitioner that Ministry of Road Transport and Highways, Government of India through Chief Engineer (National Highways), Public Works Department, Government of Maharashtra/Respondent issued notice inviting tender for project '*Rehabilitation and up-gradation of NH-66 (Erstwhile NH-17), from Km*



367/200 to Km 406/030 [Talgaon to Kalmath section] to Four lane with paved shoulder in the state of Maharashtra under NHDP-IV on Hybrid Annuity Mode’ on 02.09.2016. On 17.10.2016, KCC Buildcon Private Limited, the successful bidder submits its bid for the Bid Project Cost of Rs.468,00,00,000/- and Letter of Award (LoA) was issued by the Respondent on 25.11.2016.

3. It is stated in the petition that in compliance with terms of the LoA, the successful bidder incorporated the Petitioner as a Special Purpose Vehicle (SPV) to undertake and perform obligations and exercise rights of the successful bidder for construction of the project. Petitioner and Respondent executed the Concession Agreement dated 09.02.2017 for implementation of the project on a Hybrid Annuity basis, subject to terms set forth therein. Disputes subsequently arose between the parties and claiming that Petitioner suffered huge losses due to the breach committed by the Respondent, it notified its claims to the Respondent vide letter dated 16.05.2023, in terms of Article 38.1 of the Agreement seeking damages for delay in providing Right of Way for construction and implementation of the project, balance payment towards executed change of Scope and bonus payment for atleast a sum of Rs.48,38,11,609/-.

4. It is averred that upon failure of the Respondent to respond to the letter till January, 2024, Petitioner vide letter dated 15.01.2024 called upon the Respondent in terms of Article 38.2 for amicable settlement through mediation/conciliation. However, Respondent vide e-mail dated 12.04.2024 shared a letter dated 05.06.2023 whereby claims of the Petitioner were rejected. On 23.04.2024, conciliation meeting was held but the disputes could not be resolved and Petitioner thus issued a notice dated 17.07.2024



invoking the arbitration clause incorporated in Article 38.3 nominating Justice Mrs. Gyan Sudha Misra, former Judge of the Supreme Court as its nominee and requested the Respondent to nominate its arbitrator within 30 days but there was no response.

5. Learned counsel for the Respondent had sought time to revert back with instructions on 07.04.2025 and it is submitted, on instruction, by the learned counsel that Respondent has nominated Shri Akhilesh Kumar, Special Director General (Retd.), CPWD as its nominee arbitrator and the two Arbitrators may appoint the third Arbitrator, who will be the Presiding Arbitrator of the Arbitral Tribunal in terms of the arbitration clause.

6. Accordingly, with the consent of the parties, this petition is allowed seeking appointment of three member Arbitral Tribunal to adjudicate the disputes between the parties. Justice Mrs. Gyan Sudha Misra, former Judge of the Supreme Court is appointed as Petitioner's nominee Arbitrator while Shri Akhilesh Kumar, Special Director General (Retd.) is appointed as the nominee Arbitrator of the Respondent. The two Arbitrators will concur to appoint the Presiding Arbitrator within a maximum of four weeks from today. In the event, Arbitrators are unable to concur on the name of the third/Presiding Arbitrator, parties shall be at liberty to take recourse to legal remedies.

7. As agreed between the parties, the arbitration will be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and as per its rules. Fees of the learned Arbitrators shall be fixed in accordance with DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

8. Arbitrators shall make a disclosure as required under Section 12 of the 1996 Act.



9. It is made clear that Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties to the *lis* are left open. Parties shall be free to file their claims/counter claims before the Arbitral Tribunal in accordance with law.

10. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 15, 2025/shivam