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

+ **ARB.P. 2025/2024**

RELIANCE INDUSTRIES LIMITED

.....Petitioner

Through: *Appearance not given.*

versus

UNION OF INDIA THROUGH MINISTRY OF RAILWAYS

.....Respondent

Through: Mr. Sandeep Kumar Mahapatra
CGSC with Mr. Tribhuvan and Mr.
Ishaan Malhotra, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

27.01.2025

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1. This Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator as per the Clause 2900 of the IRS condition of contract and Clause 4 of the Special Conditions of Contract as per Rate Contract dated 18.03.2020 to adjudicate on the disputes which have arisen between the parties with regard to the payment of the outstanding amount for Sale of High-Speed Diesel (HSD) pursuant to Rate Contract..
2. It is stated that since the disputes have arisen between the parties under the Rate Contract dated 18.03.2020, the Petitioner has issued a notice dated 27.08.2024 to the Respondent invoking arbitration.
3. Clause 2900 of the IRS condition of contract and Clause 4 of the Special Conditions of Contract as per Rate Contract dated 18.03.2020



contains an Arbitration Clause, which reads as under:-

“THE ARBITRATION AGREEMENT

24 The arbitration agreement between the parties is contained in Clause 4 of the Special Conditions of Contract annexed as Annexure – 1 to the Rate Contract dated 18.03.2020 as under:

“4. Arbitration

This Contract is subject to standard Arbitration clause 2900 of IRS Conditions of contract...”

Clause 2900 of IRS Condition of Contract is reproduced below 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.

25 Recourse can no longer be had to the appointment procedure contemplated in Clause 2900 in view of Section 12 (5) read with the Seventh Schedule to the Arbitration and Conciliation Act, 1996. The Claimant clarifies that it is not willing to waive the applicability of Section 12(5). It is accordingly proposed that the parties mutually consent to submit of the dispute to arbitration by a Sole Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

4. The Petitioner issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking arbitration on 27.08.2024 and suggested its nominee to be appointed as Arbitrator. The said notice was replied to by the Respondent on 27.11.2024 by appointing the Executive Director, Railway Store (G) as the Sole Arbitrator.
5. Clause 4 of the arbitration agreement stipulates that disputes shall be referred to the sole arbitration of a Gazetted Railway Officer appointed by the Respondent. In view of the judgment passed by the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760 and view of Section 12 read with Fourth Schedule of the Arbitration and Conciliation Act, 1996, the Respondent cannot appoint its employee as an Arbitrator and, therefore, Clause 4 is bad. The Petitioner has approached this Court for appointment of an Arbitrator.
6. Notice in the petition was issued on 13.12.2024 and the case was listed on 20.01.2025. On 20.01.2025, time was sought by the Respondent to seek instructions and the case was directed to be listed today.
7. In view of the fact that disputes have arisen between the Parties and



there is an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

8. Accordingly, Justice A. K. Sikri, Former Judge of the Hon'ble Supreme Court (Mob. No.9818000300), is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.

9. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

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

11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The present petition stands disposed of in the above terms.

SUBRAMONIUM PRASAD, J

JANUARY 27, 2025

RJ