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

+ **ARB.P. 2066/2024**

M/S JPG CONSTRUCTIONS PVT. LTD.

.....Petitioner

Through: Mr.Nakul Mohta, Ms.Misha Rohatgi
Mohta, Ms.Divyani Deepti,
Advocates

versus

UTTAR PRADESH RAJKIYA NIRMAN NIGAM LIMITED

.....Respondent

Through: Mr. Rajesh Pathak, Mr. Shirsh
Kumar, Mr. Ishank Gupta, Advs.
Mr. Shlok Chandra, Standing Counsel
ESIC and Mr. Sankalp Sharma

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

07.01.2025

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I.A. 49612/2024 (Exemption)

Allowed, subject to all just exceptions.

ARB.P. 2066/2024 & I.A. 49611/2024

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioners seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Parties under the Agreement dated 02.12.2015. Clause 20.6 of the said Agreement, which is an arbitration clause, reads as under:

“20. 6 Unless settled amicably, any dispute in respect of which the DAB 's decision (if any) has not become final and binding shall be finally settled by reference to arbitration. Unless otherwise agreed by both Parties

(a) the dispute shall be finally settled under the



Arbitration and Conciliation Act, 1996.

(b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules;

(c) the arbitration shall be conducted in the language for communication defined in Sub-Clause 1.4 [Law and Language] The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) the Construction Agency, and any decision of the DAB, relevant to the dispute. Neither party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration. Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties and the DAB shall not be altered by reason.”

2. Since the dispensary was to be constructed at Delhi, the Courts at Delhi shall have the jurisdiction under Section 20 CPC to entertain the present Petition.
3. It is stated by the learned Counsel for the Respondent that the ESIC is a necessary party and an application for impleadment has already been moved by the ESIC.
4. Since the Agreement dated 02.12.2015 is between the Petitioner and the Respondent alone, it is for the Respondent to move an appropriate application for impleadment of ESIC before the Arbitrator on which the Arbitrator will take a decision.
5. In view of the fact that disputes have arisen between the Parties and the Agreement dated 02.12.2015 contains arbitration clause, this Court is



inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

6. Though the Arbitration Clause indicates that the panel shall consist of three Arbitrators, learned Counsel appearing for both the parties state that a sole Arbitrator be appointed by this Court for adjudicating the disputes between the parties.

7. Accordingly, Mr. Mohammad Rafiq, former Chief Justice of Orrisa High Court, (Mob. No.941405577) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

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 along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 07, 2025

RJ