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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 2040/2025**
NEC CORPORATION INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Divyam Agarwal, Ms. Pallavi
Kumar, Ms. Priya Chauhan, Mr.
Pranav Nayar, Advocates

versus

DIRECTORATE OF HEALTH SERVICESRespondent
Through: Ms. Vaishali Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **12.12.2025**

1. This Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Section 15(2) of the Arbitration and Conciliation Act has been filed by the Petitioner seeking appointment of substitute Arbitrator in place of the Arbitrator nominated by the Respondent on the ground that the Arbitrator nominated by the Respondent has resigned on 01.11.2025.
2. The facts of the case, as narrated in the Petition, reveals that a Master Service Agreement dated 01.06.2022 was entered into between the Petitioner and the Respondent whereby the Petitioner was required to develop a comprehensive platform for the citizens of Delhi to transform the healthcare service delivery system. It is stated that disputes arose between the parties because of termination of the said Agreement. It is stated that a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the Petitioner before this Court seeking urgent reliefs. It is stated that during the pendency of the said Petition, the Petitioner herein appointed



its nominee Arbitrator. The Respondent also appointed its nominee Arbitrator and the nominee Arbitrators appointed the Presiding Arbitrator and arbitral proceedings began. It is stated that after expiry of the mandate of the Arbitral Tribunal, the same was extended by a co-ordinate Bench of this Court *vide* Order dated 07.07.2025 in O.M.P.(MISC.)(COMM.) 503/2025, which was filed under Section 29A of the Arbitration and Conciliation Act. It is stated that since there were certain doubts regarding the impartiality of the Arbitrator nominated by the Respondent, the Petitioner herein filed an application under Section 12(5) read with Seventh Schedule read with Sections 13(2) and 14 of the Arbitration Act, before the Arbitral Tribunal challenging the appointment of the nominee Arbitrator of the Respondent. It is stated that after filing of the said Application, the nominee Arbitrator of the Respondent resigned on 01.11.2025. It is stated that pursuant to the resignation of the nominee Arbitrator of the Respondent, the Presiding Arbitrator sent e-mails to the Respondent for appointing its nominee Arbitrator. It is stated that since the Respondent has not appointed its nominee Arbitrator, the Petitioner has filed the present Petition.

3. On a query by this Court as to why the Petitioner has not approached this Court by filing a Petition under Section 11 of the Arbitration Act earlier for appointment of the Arbitrator, learned Counsel for the Petitioner has drawn the attention of this Court to Clause 3 of Article 9 of the Agreement which prescribes that the disputes between the parties under the Agreement have to be adjudicated by a bench of three Arbitrator and both the sides have to nominate one arbitrator each who will then appoint a Presiding Arbitrator. He also states that the Respondent has now lost its authority to appoint its nominee Arbitrator as the time period prescribed under Section 11 of the



Arbitration and Conciliation Act is over. He draws the attention of this Court to the Judgment of the Apex Court in Continental India (P) Ltd. v. General Manager Northern Railway, **2022 SCC OnLine SC 922**, wherein in paragraph No.11 of the said Judgment, the Apex Court has held that once an Arbitrator is not appointed as per the agreed procedure within stipulated time, right of the party concerned to appoint an arbitrator is forfeited.

4. Be that as it may. It is stated by the learned Counsel for the Respondent that they have appointed Mr. S. K. Singh, IAS (Retd.), as their nominee Arbitrator.

5. In order to avoid any confusion and keeping in mind that the Arbitration Act is based on the principle of party autonomy, instead of the Respondent appointing Mr. S. K. Singh, IAS (Retd.), as their nominee Arbitrator, this Court appoints Mr. S. K. Singh, IAS (Retd.), as the nominee Arbitrator of the Respondent.

6. The learned Arbitrator shall be entitled to fees as per the fourth Schedule of Arbitration and Conciliation Act, 1996.

7. Mr. S. K. Singh, IAS (Retd.) is requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within two weeks of entering the reference.

8. Needless to say, nothing in this order shall be construed as an expression on the merits.

9. The Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 12, 2025/Rahul