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

+ **ARB.P. 141/2025**

TECHNOCRATS ADVISORY SERVICES PRIVATE LIMITED

.....Petitioner

Through: Ms. Mani Gupta, Advocate.

versus

**UNION OF INDIA THROUGH THE SECRETARY MINISTRY OF
ROAD TRANSPORT AND HIGHWAYS**Respondent

Through: Mr. Vinay Yadav, SPC, Ms Kamna
Behrani, Mr. Ansh Kalra and Mr.
Divyanshu Sinha, Advocates
Mr. Chitvan Singhal, GP, UOI

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

10.03.2025

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Petitioner and the Respondent under Contract for Collection and Analysis of Bridge Condition and Bridge Inventory Data by MBIU Equipment for the purpose of Major / Minor Bridges on all NHS including those with NHAI for a period of three years in the State of Arunachal Pradesh (Package – 18).
2. Clause 4.5 of the Special Conditions of Contract contains an arbitration clause which is being reproduced as under:

“4.5 ARBITRATION



a) In the event of any question, dispute or difference arising under general conditions or special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by the general or the special conditions), the same shall be referred to the sole arbitrator, appointed by the Indian Road Congress (IRC). The arbitrator will be a retired Government Servant of Chief Engineer Level. The 'Award' of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the Arbitrator's dying, neglecting or refusing to act or resign 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 IRC 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 IRC 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, extend the time for making the Award.

(e) Upon every and any such reference, the assessment of the costs incidental to the reference and Award, respectively, shall be at the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1996 as amended and the rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under



this clause.

(g) If the value of the claim in a reference exceeds Rs. 1 lakh, the arbitrator shall give reasoned Award.

(h) The venue of arbitration shall be the place from which formal Acceptance of Tender is issued or such other place as the DG(RD) & SS at his discretion may determine.”

3. Learned Counsel for the Respondent states that as per arbitration clause, the matter has to be referred to Indian Road Congress (IRC) for appointment of an Arbitrator.

4. Learned Counsel appearing for the Petitioner draws attention of this Court to an Order dated 18.08.2022 passed by a Co-ordinate Bench of this Court in ARB.P. 108/2020 in which the very same arbitration clause and the same contract entered into between the same parties has been dealt with. Relevant portion of the said Order read as under:

“31. It is an undisputed fact that the Contract that was awarded to the petitioner has been closed by the respondent No.1 vide its Circular dated 22nd March, 2019 issued to the Regional Office and the Regional Office vide its Letter dated 29th March, 2019 directed the petitioner to stop the work immediately as-is-where-is basis. Thereafter, the arbitrable disputes and claims have been raised by the petitioner to which the counter-claims have been raised by the respondent No.1. There is also no challenge that Shri B.V. Tripathi, Engineer-in-Chief and HoD (Retd.), UP PWD has been appointed as the Sole Arbitrator vide Letter dated 13th December, 2019. It is also not in dispute that there exists the procedure for appointment of Arbitrator in Clause 4.5 of the Contract Agreement executed between the parties. Clause 4.5 of the



Contract Agreement reads as under:

“Clause 4.5 – Arbitration: -

(a) In the event of any question, dispute or difference arising under general conditions or special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specifically provided for by the general or the special conditions), the same shall be referred to the sole arbitrator, appointed by the Indian Road Congress (IRC). The arbitrator will be a retired Government Servant of Chief Engineer Level. The ‘Award’ of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the Arbitrator’s dying, neglecting or refusing to act or resign 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 IRC 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 IRC 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, extend the time for making the Award.

(e) Upon every and any such reference, the assessment of the costs incidental to the reference and Award, respectively, shall be at



the discretion of the arbitrator.

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

(g) If the value of the claim in a reference exceeds Rs. 1 lakh, the arbitrator shall give reasoned Award.

(h) The venue of arbitration shall be the place from which forma Acceptance of Tender is issued or such other place as the DG(RD) & SS at his discretion may determine.”

32. The sole challenge which has been raised by the petitioner is that admittedly the Sole Arbitration has been appointed by the High-Powered Committee of the respondent No.2-IRC. It is explained in the petition that the Secretary General, IRC, who was the Member of the Committee is on deputation from the Ministry of Road Transport and Highways, which is a party to the dispute. Moreover, the Director General (Road Development) is already a party to the dispute. Furthermore, the High-Powered Committee of the respondent No.2-IRC is controlled by the respondent No.1.

33. In Voestalpine Schienen GMBH v. DMRC (2017) 4 SCC 665, the Supreme Court dealt with the significance of independence and impartiality of the Arbitrator. It observed as under:

“Independence and impartiality of the Arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the



fundamental principles of natural justice which applied to all judicial and quasi-judicial relationship between the parties to the arbitration and the arbitrators themselves are ontractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial. The United Kingdom Supreme Court has beautifully highlighted this aspect in Hashwani vs. Jivraj in the following words: (WLR P. 1889, para 45)

“45. ... the dominant purpose of appointing an arbitrator or arbitrators is the impartial resolution of the dispute between the parties in accordance with the terms of the agreement and, although the contract between the parties and the arbitrators would be a contract for the provision of personal services, they were not personal services under the direction of the parties” Similarly, Cour de Cassation, France, in a judgment delivered in 1972 in Consorts Ury, underlined that:

“an independent mind is indispensable in the exercise of judicial power, whatever the source



of that power may be, and it is one of the essential qualities of an arbitrator.”

34. The decision of the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd. (supra) recognises the importance of ensuring that the Arbitrator having an interest in the outcome of the matter is not appointed so as to obviate any doubt as to the impartiality and independence of Arbitral Tribunal.

35. The Supreme Court in Voestalpine Schienen GMBH v. DMRC (supra) observed and explained why the names of the Arbitrators in the panel should not be limited to Government Departments or Public Sector undertakings and held that in order to instil confidence in the mind of the other party, it is imperative that apart from serving or retired engineers of Government Departments and Public Sector Undertakings, engineers of prominence and high repute from Private Sector should also be included. Likewise, the panel should comprise persons with legal background like Judges and Lawyers of repute. While upholding the procedure of having a panel of Arbitrators from whom the Arbitrator may be selected, it was observed that this panel should be broad based and not limited to the Officers/Officials of one party.

36. Likewise, the Co-ordinate Bench in BVSR KVR (Joint Ventures) vs. Rail Vikas Nigam Ltd. ARB. P.370/2019 Decided on 12th February, 2022, held that the panel of five arbitrators who were all serving employees of the Respondent Company from which the petitioner was asked to select a nominee Arbitrator was invalid being hit by the prohibited relationship laid down in Schedule 7 of the Act. The persons forming part of the Arbitral Tribunal were held ineligible in law to be appointed as Arbitrators.



37. The validity of panel containing names of five proposed arbitrators as in present case, came up for consideration in *Voestalpine Schienen GMBH (supra)*. The Supreme Court held as under:

“28. Before we part with, we deem it necessary to make certain comments on the procedure contained in the arbitration agreement for constituting the arbitral tribunal. Even when there are number of persons empanelled, discretion is with the DMRC to pick five persons therefrom and forward their names to the other side which is to select one of these five persons as its nominee (Though in this case, it is now done away with). Not only this, the DRC is also to nominate its arbitrator from the said list. Above all, the two arbitrators have also limited choice of picking upon the third arbitrator from the very same list, i.e., from remaining three persons. This procedure has two adverse consequences. In the first place, the choice given to the opposite party is limited as it has to choose one out of the five names that are forwarded by the other side. There is no free choice to nominate a person out of the entire panel prepared by the DMRC. Secondly, with the discretion given to the DMRC to choose five persons, a room for suspicion is created in the mind of the other side that the DMRC may have picked up its own favourites. Such a situation has to be countenanced. We are, therefore, of the opinion that Sub-clauses (b) & (c) of Clause 9.2 of SCC need to be deleted and instead choice should be given to the parties to nominate any person from the entire panel of arbitrators. Likewise, the two arbitrators nominated by the parties should be given full freedom to choose third arbitrator



from the whole panel.”

38. In view of the objection taken by the petitioner in respect of the High- Powered Committee which appointed the Sole Arbitrator is not unfounded. It may be comprising persons of highest integrity, and competence, but it cannot be ignored that they have an interest in the outcome of the arbitration and thus, do not meet the criteria as laid down in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd. (supra).

39. Considering the facts and submissions, Mr. Ranvir Singh, former Chief Engineer, South MCD, Mobile No. 9717788065, who has been appointed as a Sole Arbitrator in the connected matter pertaining to Package-17, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.”

5. In view of the fact that the aforesaid Order deals with the very same arbitration clause and the contract which has been entered into between the same parties as in the present petition, this Court is inclined to follow the dictum followed by the Co-ordinate Bench of this Court.

6. Accordingly, Ms. Justice Rekha Palli, Former Judge, Delhi High Court (Mob. No. 9810012120) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

7. 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.

8. 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.

9. 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.

10. 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.

11. The present petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 10, 2025

S. Zakir