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

*Date of decision:-29<sup>th</sup> April, 2024.*

+ **O.M.P.(MISC.)(COMM.) 327/2024**

NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Petitioner

Through: Mr. Ankur Mittal, Mr. Abhay Gupta,  
Ms. Ikshita Parihar & Ms. Shalini  
Singhal, Advs. (M: 8377974055)

versus

M/S KCC BUILDCON PVT. LTD. .... Respondent

Through: Mr. Naresh Markanda, Senior  
Advocate with Mr. Rohan Markanda,  
Advocate. (M: 9501031506)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition filed on behalf of the Petitioner- National Highways Authority of India (*hereinafter*, 'NHAI') under Section 29A of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act'). The Petitioner vide the present petition is seeking extension of the mandate of the Id. Arbitral Tribunal, as the same stood expired on 29<sup>th</sup> February, 2024. Ld. Counsels for both the parties are present.
3. Disputes in the present case arise out of an Engineering, Procurement, and Construction agreement (*hereinafter*, 'EPC') which was entered into between the parties herein on 20th December, 2016.
4. The Court notices that the Id. Arbitral Tribunal in this case was constituted on 23rd December, 2021 and thereafter, six months' extension was agreed upon between the parties.



5. Upon a query by the Court as to why the arbitral proceedings are taking this long, it is submitted by Id. Counsel for the Petitioner that in September, 2022, the matter was listed finally for evidence. At that stage, the Respondent moved an application for amendment of the written statement and thereafter, amendment of the statement of claims. Consequently, fresh pleadings had to be filed.

6. The record also shows that the Respondent, who was claimant before the Id. Arbitral Tribunal in '**M/s KCC Buildcon Pvt. Ltd. v. National Highways Authority of India**', had filed an affidavit of evidence, along with fresh documents running into 6000 pages on 31st March, 2023. Subsequently, the Petitioner on 11th April, 2023 filed an application seeking rejection of additional documents filed by the Respondent. Thereafter, extensive hearings were conducted by the Id. Arbitral Tribunal on whether the documents filed by the Respondent along with the affidavit of evidence ought to be taken on record. Thus, the delay is sought to be explained.

7. The matter is currently at the stage of Respondent's cross-examination. At this stage, Id. Senior Counsel Mr. Naresh Markanda for the Respondent submits that since the mandate of the Id. Arbitral Tribunal has expired, the Respondent has chosen to nominate a new Arbitrator, vide a letter on behalf of the Respondent to the Petitioner on 30th March, 2024. Further, vide the said letter, the Respondent alleged that the erstwhile Id. Arbitral Tribunal was not independent or impartial. The relevant portion of the said letter is hereinunder:

*“As would be evident from the foregoing, the mandate of the Arbitral Tribunal has terminated, inasmuch as none of the parties has taken any steps for extension of the mandate. Consequently,*



*the Arbitral Tribunal is no longer in existence. Therefore, the Tribunal is required to be reconstituted in accordance with Article 26.3 of the Contract.*

**Even otherwise, the erstwhile Arbitral Tribunal was not independent or impartial, so much so that two of the members were having strong leanings with NHAI.** *Moreover, since none of the members had any legal acumen, the issues which primarily related to evidence were not dealt with in a manner. Hence, it is imperative that a fresh Arbitral Tribunal of independent and impartial persons, having judicial give would also be in the fitness of and in the interest of justice if the newly constituted Arbitral Tribunal does not consist of any of the members of the terminated Tribunal.”*

8. Ld. Senior Counsel for the Respondent submits that his client has also filed a fresh petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a new nominated arbitrator and fresh constitution of the arbitral tribunal. It is stated that notice has been issued in the said petition being ***ARB.P.526/2024 titled ‘M/s. KCC Buildcon P. Ltd. v. NHAI’.***

9. Heard. This Court is clearly of the opinion that making such allegations, as are extracted above, without any basis is contrary to the letter and spirit of the arbitral process. Moreover, in the present case, the amendment at the stage of evidence was made by the Claimant/Respondent. Thus, clearly, the record shows that unnecessarily, evidence is being delayed by the Respondent.

10. Under such circumstances, allegations raised by the Respondent against the present Id. Arbitral Tribunal are devoid of any basis. The petition seeking extension of mandate of the Id. Arbitral Tribunal, cannot be



converted into a ruse to obtain replacement of an arbitrator or a tribunal, by making unfounded allegations against an arbitrator or a Tribunal.

11. Accordingly, the mandate of the Id. Arbitral Tribunal is extended till 31st December, 2024.

12. Let a copy of this order be also placed before the Court where the petition being **ARB.P. 526/2024** is pending.

13. The present petition is disposed of. All pending applications are disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**APRIL 29, 2024/dk/rks/dn**