

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

Arbitration Application No.49 of 2024

ORDER:

This Application is filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act' hereinafter) seeking appointment of arbitrator for adjudicating the disputes between the Applicant and Respondent No.1.

2. The brief facts as stated in the present Arbitration Application and in Agreement dated 20.03.2020 are that the Applicant was a successful bidder and was awarded with work pertaining to spill way and powerhouse of Koteswar Hydro Electric Project at Tehri Dam, Uttarakhand. The Applicant entered into an agreement dated 14.11.2002 with Tehri Hydro Electric Development Corporation Limited (hereinafter referred as 'THDC'). Later respondent No.3 approached the applicant and participated in the work. When the work was in progress, certain disputes arose between the Applicant and THDC and legal proceedings were initiated and an award dated 17.12.2010 was passed. The said award was challenged before the Hon'ble High Court of Delhi and in the said background, the High Court of Delhi passed orders on 13.12.2019 in O.M.P.No.100 of 2011 and I.A.No.15200 of 2019 in OMP No.100 of 2011 directing THDC to deposit an amount of Rs.4,50,00,000/- within a period of six (6) weeks

and further permitted the Applicant to withdraw such amounts by submitting Bank Guarantees as securities.

3. Thereafter, respondent No.3 approached the Applicant and agreed for opening the Escrow account for depositing the above amounts, accordingly respondent No.1 was appointed as Escrow Agent and an agreement dated 20.03.2020 was entered between the parties. The terms of the Escrow Agreement are that:

- (i) Respondent No.3 will provide 100% Bank Guarantees needed as per the agreement.
- (ii) Applicant will open a designated bank account with respondent No.2 with an Escrow Agreement to deposit the money withdrawn from the Registrar, High Court of Delhi to the extent of the Bank Guarantee amount issued by respondent No.2 on behalf of the Applicant and such BG is acceptable by the Registrar, High Court of Delhi.
- (iii) (a) 5.5% of the above such deposit will be transferred to the Applicant or to any nominee of the Applicant's choice and
(b) the balance will be transferred to respondent No.3.

4. Consequent to the furnishing of the Bank Guarantee, an amount of Rs.150,00,00,000/- was deposited to the above Escrow Account No.4437002900000827 and thereafter the said amounts were transferred as per the Escrow Agreement to the Applicant and respondent No.3. In view of the same, the Escrow account has

outlived its purpose as the actions/transactions contemplated under the Escrow Agreement was satisfied and completed and stood fulfilled and it is not permissible for either of the parties to operate Escrow account in any manner. In terms of clause 13 of Escrow Agreement, the agreement shall be terminated based on the written communications of Applicant and respondent No.3. Further, as per clause 13.3 and 13.5 of Escrow Agreement, the Escrow Account shall stand closed by both the parties seeking termination of Escrow Account and thereupon respondent No.1 will automatically cease to be an Escrow Agent.

5. The Applicant issued letter on 19.06.2020 requesting respondent No.1 marking a copy to respondent No.3 to formally close the Escrow account. Respondent No.3 had also issued the letter dated 25.06.2020 intimating respondent No.1 that both the parties have received their respective payments under Escrow Agreements and therefore, sought for termination of Escrow Agreement. Thereafter, on 13.10.2022, the Applicant received a letter calling upon to update its KYC details for its Escrow Bank Account and the Applicant was under impression that the Escrow Agreement was closed and did not update KYC details. Thereafter, the Applicant immediately issued a letter on 29.10.2022 intimating respondent No.1 that both the parties to the Escrow Agreement has already issued written instructions to

respondent No.1 to affect closure of Escrow Agreement. In spite of the same, the said account was not formally closed. Thereafter, the Applicant issued another letter on 29.10.2022 requesting respondent No.1 to terminate and close the agreement but respondent No.1 had failed to facilitate the closure of Escrow Agreement dated 20.03.2020.

6. It is further submitted that respondent No.3 has done forgery, fabrication of documents including creation of General Power of Attorney and subject contract dated 17.02.2011 and sub-contract dated 16.11.2002 by forging the signatures of authorized signatory. Later an FIR No.254/2023 against Project Director of respondent No.3 in the Chilakalurupet Police Station, Andhra Pradesh was lodged which is under investigation. Thereafter, the Applicant and its principal authorized signatory filed suits bearing O.S.No.32 of 2023 on the file of XIII Additional District Judge, Palnadu District at Narsaraopet and O.S.No.516 of 2023 on the file of XXVI Additional Chief Judge, City Civil Court to declare both the forged and fabricated documents as null and void having no legal effect so as to combat the fraud played by respondent No.3.

7. It is further submitted that an unauthorized person from respondent No.3 has issued an e-mail dated 01.11.2022 requesting respondent No.1 from refraining and closing the Bank account by

alleging that respondent No.3 is also party to Escrow Agreement and the said account may be required in future. The Applicant further case is that there are many more transactions and receipts during the course of its overall business and there is every possibility that such receipts may be deposited in Escrow Account inadvertently and respondent No.3 may attempt to siphon off such amounts/receipts credited into Escrow Account. Thereafter, the Applicant under Section 9 of Arbitration and Conciliation Act, 1996 filed C.O.P.No.54 of 2023 before the Principal Special Court for Trial and Disposal of Commercial Disputes, City Civil Court, Hyderabad seeking an interim relief restraining the respondents not to operate Bank Account bearing No.4437002900000827 (Escrow Account), LCB Hyderabad branch, Punjab National Bank. The Special Court by an order dated 14.07.2023 in C.O.P.No.54 of 2023 directed the respondents to maintain *status quo* in operating the said account. Thereafter, the interim order was extended from time to time.

8. The subject matter of the dispute against respondent No.1 is that the Applicant and respondents entered into the Escrow Agreement on 20.03.2020 for a specific purpose and despite the purpose has been achieved and both the parties have communicated *vide* letters dated 19.06.2020 and 25.06.2020 regarding the Escrow account, the Escrow Agent did not close the said account. The Escrow

Agent intends to keep the Escrow Agreement open citing the reason that there is a Bank Guarantee linked to the account.

9. Clause 12 of Escrow Agreement dated 20.03.2020 refers to dispute resolution which is extracted herein for the facility of reference:

“DISPUTE RESOLUTION:

12.1 General

Except as may be set forth elsewhere in this Agreement among the parties or between two parties, any dispute arising out of or in connection with this Agreement shall be determined in accordance with the provisions of this Clause 12.

12.2. If any dispute arises between the Parties ("Disputing Parties") hereto during the subsistence of this Agreement, thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding a question, including the question as to whether the termination of this Agreement by one party hereto has been legitimate. The Disputing Parties hereto shall endeavor to settle such dispute amicably. The attempt to bring about an amicable settlement shall be considered to have failed as soon as one of the Parties hereto, after reasonable attempts, which attempt shall continue for not less than 30(Thirty) days from the date of service of notice of dispute by one disputing party to other in writing (Dispute Notice), has not received a favourable response to the Dispute notice or is of the view that the Dispute has not been resolved to its satisfaction. Further,

any controversy, claim or dispute arising out of or relating to this Agreement which cannot be settled amicably by the Disputing Parties hereto shall be resolved exclusively by arbitration in accordance with the Arbitration and Conciliation Act, 1996, as amended ("Arbitration Act"). If there is an arbitration proceedings in accordance with this Clause, the Parties agree as follows:

(a) In the event that there are even number of Disputing Parties, each such disputing party shall appoint 1 (one) arbitrator each ("Party Arbitrator") within 30 days of the receipt of the Dispute Notice and the Party Arbitrators so appointed shall jointly appoint another arbitrator (Joint Arbitrator) within 5 days (Five) business days of the Disputing Parties appointing their party arbitrators. The Party Arbitrators and the joint arbitrator shall form the Arbitration Panel (Panel) and the Joint Arbitrator will be the chairman of the panel. In the event there are odd numbers of Disputing Parties, each such Disputing Party shall appoint a Party Arbitrator and the Party Arbitrators so appointed shall form the Panel. If a Disputing Party fails to appoint its arbitrator within the period specified in this Clause, any other party shall be entitled to make an application to the relevant court for appointment of an arbitrator (at the cost of the defaulting Disputing Party) and the arbitrator so nominated shall be deemed to be the arbitrator nominated by the defaulting Party"

(b) Any arbitration shall be conducted in the English Language and any arbitration proceedings under this clause 12.2 shall be held in Hyderabad.

(c) The decision of the Panel shall be final and binding on the parties

(d) Each Party, shall pay its own costs including out of pocket expenses (including without limitation, attorney's fees) incurred by such party, in connection with any such dispute.

(e) The Parties shall continue to fulfill their obligations under this Agreement pending the final resolution of the dispute and the parties shall not have the right to suspend their obligations under this Agreement by virtue of any dispute being referred to Arbitration

(f) Subject to the above, each of the Parties submits to the exclusive jurisdiction of Courts at Hyderabad.”

10. Thereafter, Applicant issued notice dated 12.10.2023 (notice of dispute) nominating their arbitrators and accordingly called upon the respondents to nominate their respective arbitrators in terms of clause 12 of Escrow Agreement dated 20.03.2020. The said notice was received by the respondents on 13.10.2023. Respondent No.1 refused to nominate, *vide* their reply legal notice dated 13.10.2023 and respondent No.3 sent reply on 30.10.2023 denying the contents of the Notice of Dispute nominating Mr.Justice A.Rajasekhar Reddy (former Judge, High Court for the State of Telangana). Thereafter, the Applicant has issued *addendum* in continuation to the Notice of Dispute and called upon respondent No.1 to appoint its arbitrator for which there was no response, thereby refusing for arbitration. Thereafter, the applicant in order to make a different and separate claim against respondent No.3 based on disputes arising out of the

memorandum of understanding dated 11.03.2020 and Escrow Agreement, has issued notice of deferral on 13.12.2023 to respondent Nos.2 and 3 indicating the intention of the Applicant to proceed with the resolution of 'Sole dispute with the Escrow agent' i.e., respondent No.1. Respondent No.3 sent a reply through e-mail dated 19.12.2023 protesting the deferral and respondent No.1 did not chose to respond objecting for arbitration.

11. It is further submitted that respondent No.3 has filed separate arbitration application *vide* A.A.No.215 of 2023 for resolution of alleged disputes arising out of agreement dated 15.11.2013. The Applicant by grouping and consolidating the disputes under agreement dated 15.11.2013 and the ancillary agreement and also the Escrow agreement dated 20.03.2020 and also the performance of one agreement which are so intrinsically interlinked with each other sought them to be taken up into one hearing as the parties concerned are same and also related to the same set of facts and circumstances. It is further submitted that by combining them would not only avoid conflicting awards and also waste huge time and resources and expenses and thereby Applicant considered it prudent and just and proper to make a "composite reference" and have a single arbitral Tribunal for settling the disputes arising between the parties. The Applicant therefore filed separate arbitration application against

respondent No.3, as such no relief is claimed against respondent No.3 and respondent No.2 (the Bank) in the present application. Under these circumstances, the Applicant has filed the present application for appointment of arbitrator in terms of Clause 12 of Escrow Agreement dated 20.03.2020.

12. Respondent No.1 i.e., Chief Manager, Punjab National Bank has filed counter affidavit and denies that there are disputes between the Applicant and respondent No.1 and respondent Bank cannot be made as party as per the Escrow Agreement. It is submitted that as per clause 6(1) of Escrow Agreement, the Bank will only act in independent capacity as an agent as such could not close the account without joint request of Applicant and respondent No.2. It is further submitted that as per clause 6.2, the joint venture will indemnify the Escrow Agent for any act done by either of the parties to the agreement. As such there is no arbitral disputes as alleged by the Applicant. It is further submitted that the Escrow Agreement dated 20.03.2020 was entered between the Applicant and respondent No.3 for a specific purpose by the Applicant and respondent No.2 and respondent Bank was made only an Escrow agent for the said agreement between the parties and respondent No.3 has deposited certain amounts in the Escrow Account and the Bank is to act as an agent for the amount deposited by respondent No.3. It is further

submitted that as per clause 13.3 and 13.5 of Escrow Agreement, the Escrow account shall stand closed upon receipt of any communication by both the parties seeking termination. Further Applicant, addressed a letter to the Bank dated 19.06.2020 requesting the Bank to close the Escrow account and as per clause 13.4 of Escrow Agreement, no party shall approach unilaterally to Escrow agent Bank for termination and in the present case, no unilateral termination without joint written agreement is allowed as per terms of Escrow Agreement. It is further submitted that in terms of order passed in C.O.P.No.54 of 2023 directing the respondents to maintain *status quo* and the Escrow account has been made debit frozen by the Bank as per the directions of the Civil Court. In the said circumstances, respondent No.1 eventually prayed this Court to dismiss the present application for appointment of arbitrator.

13. A counter affidavit has been filed by respondent No.3 stating that a notice was issued by the Applicant on 12.10.2023 to respondent No.1 and respondent No.3 whereunder Applicant nominated Mr.Justice C.Praveen Kumar (Retd.) as its nominee Arbitrator and called upon respondent Nos.1 and 3 to nominate their respective nominee arbitrator. Respondent No.1 issued reply notice dated 13.10.2023 stating that it is not a beneficiary to the Escrow Account and is only an Escrow Agent and it has no locus in the

disputes between the Applicant and respondent No.3. Respondent No.3 has also issued reply dated 13.10.2023 nominating Mr.Justice A.Rajasekhar Reddy (Retd.) as its nominee arbitrator. It is further submitted that after appointment of arbitrator, the Applicant did not take any steps for commencing the arbitration proceedings as such respondent No.3 issued notice dated 25.11.2023 to the arbitrators to commence the arbitration proceedings and a copy of the letter has also been sent to the Applicant. Thereafter, the Applicant issued addendum notice dated 04.12.2023 and also issued a notice of deferral dated 13.12.2023 which was replied by respondent No.3 by letter dated 18.12.2023 calling upon the Applicant to come forward for arbitration proceedings. The Arbitrators in consultation have appointed Mr.Justice R.Subhash Reddy (Retd.) as presiding arbitrator. Thereafter, the presiding arbitrator issued notice on 03.01.2024 and fixed preliminary hearing on 17.01.2024 for which the Applicant as well as their authorized representative raised objections *via* e-mail on the same day with regard to the constitution of the arbitral tribunal and thereafter the arbitral tribunal fixed date for hearing on 20.01.2024 and the matter was adjourned.

14. Thereafter, the Applicant's representative by an e-mail dated 17.02.2024 informed the Tribunal claiming that the Applicant has never appointed any counsel to represent the Applicant nor the

Applicant had appointed Mr.Justice C.Praveen Kumar (Retd.) as nominee arbitrator. Thereafter, the arbitrators as well as presiding arbitrators withdrew from office of arbitration and passed orders on 05.03.2024 and 06.03.2024. Mr.Justice C.Praveen Kumar (Retd.) who was nominated as arbitrator by the Applicant had also recused from the arbitration. As such the present application is infructuous and is not maintainable. It is further submitted that once the Tribunal has come into force and held proceedings which were attended by the nominee of the Applicant and thereafter by the conduct of the Applicant, the arbitrators has recused and the remedy therefore lies under Section 14 and 15 of the 1996 Act and without the appointment of Applicant's nominee arbitrator, they have lost the opportunity of appointing nominee arbitrator now. Therefore, the present Applicant is not maintainable and there are no nominee arbitrators on behalf of the Applicant. A rejoinder has also been filed by the Applicant to the counter filed by respondent No.3.

15. The petitioner/Applicant has filed I.A.No.1 of 2024 seeking to withdraw paragraph 13 of the affidavit in A.A.No.49 of 2024 wherein it is submitted that the disputes are only between the Applicant and respondent No.1 and that respondent Nos.2 and 3 are not necessary parties to the application. It is further submitted that the disputes under Escrow Agreement dated 20.03.2020 are distinct

and different to other disputes between respondent No.3 and the petitioner/Applicant, especially the agreement dated 15.11.2013. It is further submitted that at paragraph 13 of the affidavit, it has been inadvertently mentioned that both the agreements are intrinsically connected which as a matter of fact is incorrect and in order to avoid confusion, the petitioner/Applicant intended to withdraw paragraph 13 of the affidavit and also the deferral notice dated 13.12.2023 apart from being contrary to the Escrow Agreement dated 20.03.2020.

16. Respondent No.3 has filed counter affidavit to the said application denying the allegations in *to-to* and would submit that the dispute with regard to the closure of Escrow Agreement is not between the Applicant and respondent No.1 but between the Applicant and respondent No.3 and for the said purpose earlier the arbitral tribunal was constituted to adjudicate the disputes. However, the Tribunal withdrew from its office by an order dated 05.03.2024 and 06.03.2024 and the arbitrator nominated by the Applicant has recused from the office of arbitration, as such, the application has become infructuous and that respondent No.3 did not give consent for closure of Escrow Account and respondent kept the account alive. It is further submitted that all the disputes between the Applicant and respondent No.3 are intrinsically interlinked as the facts and documents are common and submits that the same arbitral tribunal may be

appointed by this Court as was appointed in A.A.No.215 of 2024 to adjudicate the disputes under the Escrow Agreement dated 20.03.2020.

17. Mr.C.V.Mohan Reddy, learned senior counsel for the Applicant would submit that Applicant and respondent No.3 entered into 3 Escrow Agreements for deposit of Rs.150,00,00,000/- each into the said accounts, so as to be disbursed among the Applicant and respondent No.3 totalling to Rs.450,00,00,000/- to be deposited pursuant to the interim order passed by the High Court of Delhi in I.A.No.15200 of 2019 in OMP (ENF)(COMM) No.100 of 2011. Admittedly, the Applicant along with the respondents had entered into one among the said three Escrow Agreements for deposit of Rs.150,00,00,000/- *vide* Escrow Agreement dated 20.03.2020. Learned senior counsel submits that after disbursement of the total amount, all the three Escrow Agreements shall be closed and accordingly, two Escrow Agreements were closed with written letters by the Applicant and respondent No.3 on 19.06.2020 and 25.06.2020 respectively. The Escrow Agent i.e., respondent No.1 did not close the Escrow Account leading to the dispute between the Applicant and respondent No.1. As such the dispute is only with respondent No.1 and respondent Nos.2 and 3 are formal parties. As per clause 12.2(a) of Escrow Agreement, the Applicant addressed a notice dated

04.12.2023 and also a deferral notice dated 13.12.2023 specifically stating that the Applicant shall be proceeding with the settlement of dispute with respondent No.1. While so, the Applicant and Respondent No.1 have consented for appointment of sole arbitrator. Even though, respondent No.3 had no role to pay, learned counsel for respondent No.3 agreed before this Court on 01.07.2024 for appointment of sole arbitrator. It is further submitted that Applicant and respondent No.1 who are actual parties to the dispute have consented for appointment of sole arbitrator on 19.09.2024. Eventually, learned senior counsel for the Applicant pray this Court for appointment of sole arbitrator under Section 11(6) of the 1996 Act.

18. Learned counsel for respondent No.3 would submit that respondent No.3 had never consented for appointment of sole arbitrator in the present application and would further submit that once the Tribunal had come into force and held the proceedings, which were duly attended by nominee of the Applicant and thereafter due to the conduct of the Applicant, the arbitrators has recused and the remedy therefore lies under Section 14 and 15 of the 1996 Act and without the appointment of Applicant's nominee arbitrator, they have lost the opportunity of appointing nominee arbitrator now. As such, the present Applicant is not maintainable and there are no nominee

arbitrators on behalf of the Applicant. Therefore, prayed to dismiss the present application.

19. Learned counsel for respondent No.1 would submit that respondent No.1 is not a disputing party and is only an Escrow Agent appointed by both the parties and as per clause 13(2) of the Escrow Agreement, unless joint agreement is filed, respondent No.1 cannot close the Escrow account and as on date, the Escrow Account is made debit frozen, as such there is no pending disputes warranting the appointment of arbitrator.

20. On 21.08.2024 this Court directed the Registry to put-up the letter, if any filed by the Applicant suggesting the name of nominee arbitrator. Thereafter, on 19.09.2024, this Court has passed the following order:

“Learned senior counsel for the Applicant as well as learned senior counsel for respondent Nos.1 and 2/Bank have concluded their arguments and reported No Objection for appointment of the sole Arbitrator.”

21. Thereafter, the matter was called upon on 03.10.2024 and learned senior counsel for the Applicant has sought time to file an application nominating their arbitrator as per clause 12.2 of the Escrow Agreement. Thereafter, the matter was adjourned.

22. Heard learned counsel for the respective parties and perused the record.

23. The present application is filed under Section 11(6) of the 1996 Act and the grievance of the Applicant is only against respondent No.1. The Escrow Agreement dated 20.03.2020 is entered among the Applicant and the respondents. Clause 12.2 stipulates the dispute resolution wherein it was agreed that the dispute shall be resolved in accordance with the 1996 Act. Clause 13 stipulates terms and termination. Clauses 13.2 and 13.3 are extracted hereunder for the purpose of reference:

“13.2. This Agreement shall be terminated only based on the submission of a written agreement by all the PARTIES partners to this effect to the Escrow Agent.

13.3. Upon termination of this Agreement pursuant to clause 13.2 above, the Escrow Account shall stand closed and any amount lying in the Escrow Account shall be released by the Escrow Agent as per clause 4 above unless contrary written instructions jointly signed by all JV partners is given.

13.4. Neither of the JV and Rithwik may unilaterally approach the Escrow Agent for any modification of the provisions of this Agreement or for its termination save as otherwise provided herein.”

24. In the letter issued by the applicant on 19.06.2020, it has been informed to the Bank that the purpose to receive and transfer as laid out in the Escrow Agreement is completed, and requested the Bank to do the needful, so that there are no further transactions that are not contemplated in the Escrow Agreement. It is further requested

to submit all transactions executed for the purpose of reconciliation and records. Whereas, in the present application, the Applicant submits that the said letter was issued to formally close the Escrow Account bearing No.4437002900000827. However, on a perusal of the letter dated 19.06.2020, there is no specific direction to close the Escrow Account. Similarly, in the letter issued by respondent No.3 to respondent No.1 on 25.06.2020, there was a specific instruction for the closure of the Escrow Account in the name of the Applicant and in the said letter, it was informed that since the purpose of opening Escrow Account is fulfilled, it is requested to terminate the Escrow Agreement and arrange to close the said account in compliance of clause 13.3 of Escrow Agreement and subsections thereof.

25. Clause 13.3 stipulates that upon termination of this Agreement pursuant to clause 13.2 above, the Escrow Account shall stand closed and any amount lying in the Escrow Account shall be released by the Escrow Agent as per clause 4 above unless contrary written instructions jointly signed by all partners is given. The Applicant and respondent No.3 has given different letters, however, the same is not in terms of clause 13.2 and 13.3 of the Agreement dated 20.03.2020 and as submitted by learned counsel for respondent No.1 that unless the Joint Agreement is given in terms of clauses 13.2 and 13.3, the account cannot be closed. It is pertinent to note that the

Presiding Arbitrator by an order dated 05.03.2024 did not wish to continue the matter and withdrew from the office as Presiding Arbitrator and passed order leaving it open to the parties to pursue the matter in accordance to law. Similarly, the sole arbitrator appointed also withdrew from the office of arbitration with immediate effect and left it open to the parties to pursue the remedies in accordance with law.

26. As on the date of reserving the present Application for passing of orders, no application, under Section 11(6) of the 1996 Act has been filed by the Applicant nominating their arbitrator. For the purpose of reference, Section 11(6) of the 1996 Act is extracted hereunder for facility:

“6. Where, under an appointment procedure agreed upon by the parties.

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of

international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.”

27. Admittedly, the sole arbitrator and the presiding arbitrator has withdrawn from the arbitration proceedings and the mandate of the arbitration is terminated in terms of Section 15 of the 1996 Act, and the Applicant did not nominate their arbitrator in terms of Section 11(6) of the 1996 Act and as submitted by respondent No.1 that the Escrow Account is debit frozen and that no parties can operate the Account and that unless joint agreement is filed by Applicant and respondent No.3, respondent No.1/Bank cannot close the Escrow account and as on date the Escrow Account is made debit freeze and

no party can operate the said Account bearing No.4437002900000827, as such there is no pending arbitral disputes warranting the appointment of arbitrator as per clause 12 of the Arbitration Agreement dated 20.03.2020. That apart in terms of Section 15 of the 1996, Act the mandate of Arbitrator terminated and requires appointment of a substitute arbitrator. The applicant has filed the present application under Section 11(6) of the 1996 Act initiating appointment of new Arbitrator when the mandate of the Arbitrator terminated.

28. In view of the observations made above, this Court is of the considered opinion that, there are no arbitral disputes with regard to Escrow Agreement dated 20.03.2020 and the Escrow Account bearing No.4437002900000827 is debit frozen, as such the present application is not maintainable. Accordingly, Arbitration Application No.49 of 2024 is devoid of merits, fails and stands dismissed.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

Date: 09.06.2025
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JUSTICE N.V. SHRAVAN KUMAR