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

+ O.M.P.(I) (COMM.) 129/2023 & I.A. 8211/2023, I.A. 8212/2023.

DURGAPUR LOGISTIC PRIVATE LIMITED ..... Petitioner  
Through: Ms. Sadiqua Fatma, Ms. Paromita  
Majumdar, Advocates.

versus

FOOD CORPORATION OF INDIA & ANR. .... Respondents  
Through: Mr. Ajit Pudussery, Mr. V. Kumar,  
Advocates for R-1.

**CORAM:**  
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**  
**28.04.2023**

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1. Issue notice. Mr. Ajit Pudussery, learned counsel, appears on advance notice, and accepts notice on behalf of the respondent No.1-Food Corporation of India ["FCI"]. With the consent of learned counsel for the parties, the petition is take up for final disposal.
2. By way of this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks interim measures of protection in anticipation of arbitral proceedings under a Concession Agreement between the parties dated 06.07.2021 ["the Agreement"].
3. The Agreement contains an arbitration clause [Clause 25.3], which provides for arbitration by a panel of three arbitrators in accordance with the Rules of the International Centre for Alternative Dispute Resolution. Delhi has been designated as the venue of the arbitral proceedings.

4. Disputes having arisen between the parties, FCI terminated the Agreement by a letter dated 09.01.2023, to which the petitioner replied on 11.01.2023. The petitioner has also since invoked the arbitration clause on 17.04.2023, and nominated an arbitrator to serve on the arbitral tribunal.

5. Mr. Pudussery submits that FCI will take expeditious steps in accordance with law to constitute the arbitral tribunal, and the present petition may be treated as an application under Section 17 of the Act, before the arbitral tribunal.

6. Ms. Sadiqua Fatma, learned counsel for the petitioner, is also agreeable to this suggestion.

7. Having regard to these submissions, and with the consent of learned counsel for the parties, the petition is disposed of with a direction upon FCI to nominate its arbitrator to the panel of arbitrators by 17.05.2023, in accordance with law. The arbitrators so nominated are requested to nominate a presiding arbitrator as expeditiously as possible.

8. Upon constitution of the arbitral tribunal, the present petition will be placed before the arbitral tribunal as an application under Section 17 of the Act. FCI may file their replies thereto within three days after constitution of the arbitral tribunal. Rejoinder thereto, if any, may be filed within two days thereafter.

9. The parties are at liberty to request the arbitral tribunal for an expeditious consideration of the application under Section 17 of the Act, at least for the purpose of *ad-interim* orders.

10. It is made clear that this Court has not entered into the merits of rights and contentions of the parties, even on *prima facie* basis, and are

expressly reserved for adjudication by the arbitral tribunal.

11. The petition stands disposed with these directions.

**APRIL 28, 2023**

*“Bhupi”/*

**PRATEEK JALAN, J**