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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 38/2016**

TEXMACO RAIL & ENGINEERING LTD Petitioner
Through: Mr. Srenik Singhvi, Adv. with
Mr. Shreyans Singhvi and Ms. Ekta
Mehta, Advs.

versus

NTPC Respondent
Through: Mr. Tarkeshwar Nath, Adv. with
Mr. Saurabh Kumar Tuteja, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **08.03.2016**

1) The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration & Conciliation Act, 1996. It is the case of the petitioner that the relevant clause for adjudication of the disputes between the parties reads as under:-

“6.2 Arbitration -

6.2.1 If either the Employer or the Contractor is dissatisfied with the Adjudicator's decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to it, then either the Employer or the Contractor may, within fifty-six(56) days of such reference, give notice to the other party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

6.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub-Clause 6.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after completion of the Facilities.

6.2.3 Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

6.2.4 The Employer and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within twenty eight (28) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for arbitrator designated in the SCC.

6.2.5 If one party fails to appoint its arbitrator within forty-two (42) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator.

6.2.6 If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in GCC Clause 5 (Governing Law) and a substitute shall be appointed in the same manner as the original arbitrator.

6.2.7 Arbitration proceedings shall be conducted (i) in accordance with the rules of procedure designated in the SCC, (ii) in the place designated in the SCC, and (iii) in the language in which this Contract has been executed.

6.2.8 The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from such enforcement.

6.2.9 The arbitrator(s) shall give reasoned award.”

2) He would also state that in terms of the Arbitration Clause 6.2.4, the

petitioner had appointed Justice A.P. Chowdhuri (Retired Judge of Punjab and Haryana High Court). According to him the respondent has not appointed their Nominee Arbitrator.

3) Mr. Tarkeshwar Nath, Advocate appearing for the respondent has placed before me letter dated 04th March, 2016 of the respondents appointing Justice B.P. Singh (Retired Judge of Supreme Court of India) as their Nominee Arbitrator.

In view of the appointment of Justice B.P. Singh, learned counsel for the parties agree that both the learned Arbitrators, shall jointly appoint a third Arbitrator. Noting the statement, no further orders are required to be passed.

The petition is disposed of as such.

V. KAMESWAR RAO, J

MARCH 08, 2016/radhika