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

+ ARB.P. 89/2016

TRF LTD

..... Petitioner

Through Mr. Sumeet Gadodra and
Mr. Kaushik Poddar, Advs.

versus

ENERGO ENGINEERING PROJECTS LTD

..... Respondent

Through Mr. Dhruv Dewan and Ms. Reena
Choudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

11.08.2017

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I.A. No. 9081/2017

1. The present petition was filed under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Retired Judge of the Supreme Court as an Arbitrator for adjudication of the dispute between the parties.
2. This court on 19.04.2016 disposed of the petition noting that as per the arbitration clause, in case of any disputes between the parties, the same shall be referred to arbitration of the Managing Director of the respondent or his nominee. This court noted the contention of the petitioner that the Managing Director of the respondent is ineligible to be appointed as an arbitrator and hence he cannot nominate any other person as an arbitrator. The contention of the petitioner was rejected and the petition was disposed

of appointing an arbitrator nominated by the Managing Director of the respondent.

3. The petitioner challenged the said order dated 19.04.2016 before the Supreme Court. The Supreme Court has vide its judgment dated 03.07.2017 in Civil Appeal No.5306 of 2017 and other connected matters has set aside the order of this court holding that once an Arbitrator has become ineligible by operation of law, he cannot nominate another as an Arbitrator. The Supreme Court held that if the Arbitrator is ineligible under Section 12(5) of the Act it is inconceivable that the person who is specifically ineligible can nominate a person to be an arbitrator. The Supreme Court allowed the appeals and set aside the order of this court and remitted the matter to this Court for fresh consideration. I may note that the Supreme Court had disposed of appeals in five matters arising out of Arb. Nos.85/2016, 86/2016, 87/2016, 88/2016 and 89/2016.

4. It is agreed between the learned counsel for the parties that in view of the judgment of the Supreme Court now it is for this court to appoint an appropriate Arbitrator to adjudicate the disputes between the parties.

5. Learned counsel for the respondent however submits that there are five connected matters as the parties have entered into five different agreements. He submits that some of the terms in the agreements are common and hence in the course of adjudication, certain common questions would arise in this case regarding interpretation of some of the identical clauses of the agreement between the parties. He submits that as there are five connected matters, in the eventuality of this Court appointing five different Arbitrators, separate awards may be passed by the different Arbitrators giving different interpretation to the identical clauses. Hence, he

submits that all the matters may be submitted to a common Arbitrator or at least two Arbitrators.

6. Learned counsel appearing for the petitioner has refuted the submissions of the respondent. He points out that there are five independent contracts. The factual controversy in all the five matters are entirely different as they pertain to different projects. Hence, he submits that the matters cannot be taken up concurrently by the same Arbitrator. He submits that it would be in the interest of justice that five Arbitrators are appointed.

7. As there are five different agreements between the parties, in my opinion, it would be appropriate for expeditious disposal that five different learned arbitrators are appointed, specially keeping in view the fact that the adjudication would involve voluminous work. Accordingly, Justice Manju Goel (Retd.) (Mobile No.9818000330) is appointed as an Arbitrator to adjudicate the disputes between the parties. The Arbitrator shall fix her fees in consultation with the learned counsel for the parties.

8. Application stands disposed of.

JAYANT NATH, J

AUGUST 11, 2017

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