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

+ CS(COMM) 107/2016 and I.A. Nos.2129/2016 (stay), 2130-31/2016 (exemption) & 2304/2016 (under Order 6 Rule 17 CPC)

M/S ENERGY INFRATECH PRIVATE LIMITED Plaintiff

Through: Mr. Gopal Jain, Senior Advocate with
Mr. Sachin Datta, Senior Advocate,
Mr. Sanjiv Goel, Advocate, Mr.
Vaibhav Niti, Advocate, Ms. Prity
Sharma, Advocate and Ms.
Chinmayee Chandra, Advocate.

versus

M/S TEESTA URJA LIMITED & ANR

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **23.02.2016**

1. Learned senior counsel for the plaintiff argues that no doubt there is an arbitration clause namely clause 7(b) as per the contract dated 25.7.2006 between the parties, however, it is vehemently and passionately contended that the Managing Director of the defendant no.1 would not legally have the sole and exclusive right to unilaterally appoint an Arbitrator inasmuch as this will violate the spirit of the provisions of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') as amended by

the amendment of the year 2015. In essence, it is contended and argued on behalf of the plaintiff that the object of introducing the strict provisions of Section 12(1)(b) with its two Explanations and Section 12(5) with Seventh Schedule is to ensure that there is no longer continuation of the earlier legal positions as to a person being considered as a neutral person for acting as an Arbitrator although he was an employee or an advisor etc etc of the party appointing the Arbitrator. It is contended that to give purity to the entire arbitration proceedings, and which is in furtherance of the principle of natural justice that justice must not only be done but it must seem to be done, that bars have been provided in the Fifth and Seventh Schedules of the Act, 1996 as amended by the 2015 amendment as against a person for being appointed as an Arbitrator. It is argued that once the settled principles are of purity of entire arbitration proceedings by appointing a totally independent person read with the principle of justice must not only be done but it must be seen to be done, the procedure which is envisaged under Section 11(2) of the Act alongwith the language contained in Section 7 of the Act will now have to be so read that whereby there cannot be unilateral appointment of an Arbitrator by one of the parties to the agreement, because

by such act, the purity of the arbitration procedure is very easily wished away besides the fact that the other party who does not appoint the Arbitrator will have a perception of violation of the principle of justice being not only being done but seen to be done.

2. At this stage I have put to the learned senior counsel for the plaintiff that these are arguments which will fall not within the subject matter of a civil suit inasmuch as once there is an arbitration clause and the issue boils down to ineligibility of the defendant no.1 to appoint the Arbitrator, the issues raised will have to be raised by the plaintiff in appropriate proceedings under the Act and not in a civil suit.

3. Learned senior counsel for the plaintiff, on instructions, initially made a prayer that this suit be converted into an appropriate petition under the Act, however, it is agreed that since there will be a considerable difference in the averments in a civil suit and the petition under the Act for challenging the appointment of the Arbitrator and which is to be taken with the fact that today the application for amendment of the plaint is still pending to add various grounds stated above for challenging the appointment of the Arbitrator, the plaintiff will file a fresh petition under the

Act to question the appointment of the Arbitrator as also plead the very root question as to the disentitlement of the defendant no.1 to unilaterally appoint the Arbitrator. It is stated that an Arbitrator has been appointed by the defendant no.1 just yesterday, in spite of the earlier vehement objections of the plaintiff, and which was communicated to the plaintiff by the defendant no.1 vide its letter dated 22.2.2016 and accordingly in the petition to be filed under the Act it is stated that plaintiff will also make averments of appropriate causes of action and also seek appropriate reliefs including on the aforesaid aspects.

4. In view of the above this suit is allowed to be withdrawn with liberty to file appropriate proceedings under the Act and claim appropriate reliefs therein.

5. Since the suit is withdrawn at the initial stage, plaintiff will be entitled to refund of 50% of the court fee and therefore the Registry will issue a necessary certificate in favour of the plaintiff.

VALMIKI J. MEHTA, J

FEBRUARY 23, 2016

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CS(COMM) No.107/2016

page 4 of 4