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

+ **O.M.P. (T) (COMM.) 10/2016**

GANGOTRI ENTERPRISES LIMITED

..... Petitioner

Through Mr Subhiksh Vasudev, Mr Ishaan
Madaan and Mr Mayank Bamniyal, Advocates.

versus

NTPC LIMITED

..... Respondent

Through Mr Tejas Karia, Mr Akhil Anand and
Siddhanth Kochhar, Advocates for R-1.
Mr Puneet Taneja, Ms Shaheen, Advocates for
NTPC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.11.2016**

1. The petitioner (hereafter 'GEL') has filed the present petition under Section 14 (2) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the directions be issued terminating the mandate of Sh Sushant Baliga, Additional Director General (Retd.), CPWD who was appointed by the respondent (NTPC) as the sole arbitrator to adjudicate the disputes between the parties arising out of Letter of Award No. CS-6130-319A-9-CS-LOA-5053 dated 21.01.2008.

2. The undisputed facts in the present case are that the arbitrator entered upon reference on 22.03.2013; GEL filed its statement of claim on 23.07.2013; NTPC filed the statement of defence on 11.11.2014; and GEL filed the rejoinder to the statement of defence on 27.08.2015. It is admitted

that after entering upon the reference on 22.03.2013, there was no communication from the arbitrator to either of the parties till more than two and half years - till 08.11.2015. On the said date, the arbitrator for the first time communicated with the parties and called upon them to file an authenticated copy of the contract between the parties and fixed the first date of hearing on 09.12.2015. However, prior to the said date, the arbitrator sent another communication dated 30.11.2015 rescheduling the said hearing to 15.01.2016. The arbitrator also sent another communication dated 05.01.2016 informing the parties about the change of his residential address.

3. Admittedly, none of the parties appeared before the arbitrator on 15.01.2016. Thereafter, the arbitrator issued a letter dated 01.02.2016 fixing the next date of hearing on 26.02.2016. In the meanwhile, the petitioner filed the present petition seeking termination of the arbitrator's mandate.

4. It is clear from the above narration of facts that there has been an inordinate and unexplainable delay in adjudication of the disputes. It is difficult to understand as to why no communication was issued by the arbitrator from 22.02.2013 till 08.11.2015. It also appears that the parties were not serious in proceeding with the arbitration; however, that cannot be a ground for an arbitrator not taking any proactive steps to conclude the proceedings commenced before him.

5. The learned counsel for the petitioner has further contended that the arbitrator sought to commence the proceedings sometime in the end of year 2015 as at the material time, the NTPC was seeking to invoke the bank guarantees. He further submits that the arbitrator deferred the hearing only

to prevent GEL from seeking an order restraining NTPC to invoke the bank guarantees. It is not necessary to examine any such allegation in these proceedings since in my view, the delay in concluding the proceedings is sufficient to indicate that the arbitrator has *de facto* lost his mandate to act as an arbitrator.

6. The main object of arbitration is to serve as a quick and effective dispute resolution mechanism for disputes between the parties. The delay of three years as is indicated in this matter, clearly frustrates the entire object of arbitration. None of the parties here have offered any explanation as to why the arbitrator thought it fit not to issue any communication to either party for a period of more than two-and-a-half years. No arbitrator has a mandate to continue proceedings indefinitely and failure to act with due dispatch would denude the arbitrator of his mandate to act as such.

7. The learned counsel for the GEL submitted that he would have no objection if the Chairman and Managing Director of NTPC exercises his powers to appoint another arbitrator. Indisputably, by virtue of Section 15 of the Act, vacancy caused on account of termination of the mandate of an arbitrator, has to be filled by appointing a substitute arbitrator in accordance with the rules applicable for appointment of the arbitrator being replaced. Therefore, the Chairman and Managing Director of NTPC is required to appoint an arbitrator in place of Sh. Sushant Baliga.

8. Accordingly, the present petition is disposed of with a direction to the Chairman and Managing Director of NTPC to appoint an arbitrator as expeditiously as possible and in any event within a period of four weeks

from today. The parties shall also file proceedings already filed before the arbitrator so appointed. The arbitrator so appointed shall proceed expeditiously and make an endeavour to complete the proceedings within a period of 12 months from his appointment.

9. The petition is disposed of with aforesaid observations.

VIBHU BAKHRU, J

NOVEMBER 30, 2016/pkv