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

+ ARB.P. 200/2016

VOLTAS LIMITED

..... Petitioner

Through: Mr Sanjay Grover, Advocate.

versus

PATHBREAKING PROJECTS LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.08.2016

1. The petitioner has filed the present application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') for appointment of an Arbitral Tribunal.
2. One of the divisions of the petitioner – Electro Mechanical and Refrigeration Business Group – is engaged in execution of turnkey projects of heating, ventilation and air-conditioning (HVAC) of buildings and large establishments.
3. The respondent company formerly known as Abhijeet Projects Ltd. invited bids for supply and installation of air-conditioning and ventilation system for coal based thermal power plant in Jharkhand which it was establishing for Corporate Power Limited (which is stated to be one of the sister concern of the respondent).
4. Pursuant to negotiations and discussions, the respondent placed eight

purchase orders/service orders – all dated 04.03.2011 – on the petitioner. Four purchase/service orders related to phase-I of the project. The petitioner states that disputes have arisen in respect of the four purchase/service orders concerning phase-I of the project. The purchase/service orders in question contain a similarly worded arbitration clause which reads as under:-

“ARBITRATION:

- a) Any disputes or differences arising out of, in connection with or in relation to this Purchase Order (“Disputes”) shall in the first instance be attempted to be resolved amicably by negotiations in good faith between the Parties.
- b) However, in case any Dispute(s) cannot be amicably resolved/settled within thirty (30) days, the same shall be referred to arbitration.
- c) Arbitration shall be in accordance with the provisions of the Indian Arbitration and Conciliation Act 1996 as amended from time to time.

Upon the failure of the negotiation process as set out in Clauses- a) & b) above, either Party may seek the reference of the Dispute(s) to arbitration by serving upon the other a written demand that such matter be arbitrated. Written demand shall include a brief description of the Dispute(s) and shall specify the name and address of an Arbitrator selected by him. The other Party shall within twenty (20) days of receipt of the arbitration demand select his Arbitrator and provides the name and address of such Arbitrator to the demanding Party and his Arbitrator. The two selected Arbitrators shall within fifteen (15) days of the selection of the second Arbitrator select the third Arbitrator. In case the two Arbitrators are not able to agree on the third Arbitrator, the same shall be appointed as per the Indian Arbitration and

- Conciliation Act 1996 as amended from time to time.
- d) The place of Arbitration shall be New Delhi, India and the laws applicable to the Arbitration procedures shall be in accordance with the Laws of India. The English language shall be used throughout the arbitrage proceedings. The Parties and the Arbitrators shall proceed with the Arbitration expeditiously and shall use their best endeavors to conclude the Arbitration within ninety (90) days from the date of start of Arbitration proceedings.
 - e) The decision of any two of the three Arbitrators shall be final and binding. The Parties agree that the decision and any award rendered by the Arbitrators in connection with a Dispute.
 - i) Shall be final and binding on the Parties.
 - ii) Shall be the sole and exclusive remedy between the Parties regarding the Dispute. The Arbitration expenses shall be borne as per the award of Arbitration if same are given in the award of Arbitration else same shall be borne by the losing Party.”

5. The petitioner invoked the Arbitration Clause by a notice dated 30.11.2015. In terms of the Arbitration Clause, the petitioner has also named its Arbitrator. However, the respondent has failed and neglected to name its Arbitrator and this has led the petitioner to file the present petition.

6. The notice in the present petition was issued on 01.04.2016. Although, the respondent has been served but none has appeared on its behalf. The petitioner has nominated Justice Jaspal Singh, (, Retired). Accordingly, Justice Jaspal Singh, (Retired) and Justice Rekha Sharma, (Retired) are appointed as Arbitrators. The above mentioned Arbitrators shall nominate the presiding Arbitrator.

7. The fees of the Arbitral Tribunal would be fixed in accordance with Schedule IV of the Act.
8. The petition is disposed of in the aforesaid terms.
9. The learned counsel for the petitioner shall communicate a copy of this order to the respondent as well as the Arbitrators.

VIBHU BAKHRU, J

AUGUST 26, 2016
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