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

+ **ARB.P. 148/2016**

SHAPOORJI PALLONJI & CO. PRIVATE LIMITED..... Petitioner
Through: Mr. Chandra Sekhar Jha,
Advocate.

versus

KORBA WEST POWER COMPANY LIMITED & ANR
..... Respondent
Through: Mr. D.K. Malhotra and Mr.
Rajesh Kr. Malhotra, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **03.11.2016**

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator for adjudication of the disputes between the parties arising out of a Letter of Award dated 28th October 2009 for construction of 275 Meters high steel B 1-flue Chimney Package for 1X600MW KWPCCL Raigarh Project, Chhattisgarh and contract dated 3rd November 2009.

2. At the outset, it is pointed out by learned counsel for the Respondents that Respondent No.2 Avantha Power and Infrastructure Limited is not a necessary party in this petition since what is sought to be referred to arbitration is the dispute between Petitioner and

Respondent No.1 from the above contract to which Respondent No. 2 is not a party.

3. Accordingly, Respondent No.2 is deleted from the array of parties. Respondent No.1 is, therefore, the sole Respondent.

4. For the purpose of the present petition it is not necessary to set out the complete history of the disputes between the parties arising out of the aforementioned contract. On 26th November 2014, the Petitioner sent a legal notice to the Respondent seeking the payment of its dues. Further reminders were sent on 22nd and 27th January, 2015. With no response forthcoming, the Petitioner sent a letter dated 21st March 2015 setting out its final claim of Rs. 31,45,65,208/-. The said letter also invoked Clause 21.0 of the Letter of Award dated 28th October 2009 viz., the arbitration clause and sought reference of the disputes to arbitration.

5. The Respondent has not filed any reply to the present petition. The only objection voiced by the learned counsel for the Respondent is that the final bill was not submitted by the Petitioner in accordance with the terms of the contract and therefore the Respondent was not in a position to process the said bills for payment.

6. From the above narration of facts, the issue which arises for consideration is whether the Petitioner is entitled to any amount claimed by it? The said issue is required to be decided by the learned arbitrator and not by this Court in the present petition.

7. For the purposes of the present petition, what is relevant is that the Respondent does not deny the existence of the arbitration clause and that the Petitioner has sent it a legal demand notice requesting that the disputes be referred to arbitration.

8. Accordingly, the Court appoints Mr. Justice K.S.P. Radhakrishnan, a former Judge of the Supreme Court of India (Mobile No. 9560013636) as Arbitrator to adjudicate the disputes between the parties including their claims and counter claims. The learned Arbitrator will fix his own terms and communicate them to the parties.

9. The parties shall appear before the learned Arbitrator on 30th November, 2016 at 4 pm or such other time and date convenient to the learned Arbitrator which will be communicated to the parties at least 10 days in advance. The venue for the first hearing will be arranged by the Petitioner and communicated to the learned Arbitrator and the Respondent one week in advance. The expenses thereof shall be borne by both the parties equally.

10. The petition is disposed of in the above terms. A certified copy of this order shall be delivered to the learned Arbitrator forthwith.

S. MURALIDHAR, J

NOVEMBER 03, 2016

RS