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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 149/2016

SHAPOORJI PALLONJI & CO. PRIVATE LIMITED

..... Petitioner

Through: Mr. Chandra Sekhar Jha,
Advocate.

versus

JHABUA POWER COMPANY LIMITED

..... Respondent

Through: Mr. D.K. Malhotra and Mr.
Rajesh Kr. Malhotra, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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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 for Site and Infrastructure Works of 1 x600MV Thermal Power Plant Project Near Barela Gorakhpur, Siwani District, Madhya Pradesh and contract dated 23rd April 2010.

2. The disputes between the parties were sought to be settled through discussions at a joint meeting held on 5th March 2012. The minutes of the said meeting *inter alia* identified the remaining compliances to be fulfilled by the Petitioner and noted that till such time the compliances were met, the Respondent would withhold a total amount of around Rs 10 crore from the various payable amounts by the Respondent.

3. According to the Respondent the Petitioner has not fulfilled its obligation as agreed in the aforementioned joint meeting. The Petitioner contends to the contrary. It appears that after the meeting, a letter was written by the Petitioner to the Respondent on 23rd November 2012 seeking payment of its “genuine dues”. A reply dated 12th December, 2012 was sent by the Respondent denying that any amount was due to the Petitioner.

4. An objection is raised by the learned counsel for the Respondent that the invocation of the arbitration clause by the Petitioner by its letter dated 11th March, 2015 was beyond the period of three years after the joint meeting held on 5th March 2012. Counsel for the Petitioner, on the other hand, points out that following the said meeting, a letter dated 23rd November 2012 was sent by the Petitioner to the Respondent asking for payment of its dues. The Respondent by its reply dated 12th December 2012 denied that any dues were owing to the Petitioner.

5. The Court is of the view that the question whether the invocation of the arbitration clause by the Petitioner was time barred should be decided by the learned Arbitrator. As long as there is an arbitration clause in the contract between the parties and the fact of it being invoked by the Petitioner is not in dispute, there is no difficulty in the Court proceeding to appoint an Arbitrator in terms of Section 11(6) of the Act.

6. 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.

7. 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.

8. 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