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

+ O.M.P. (COMM) 411/2016 and IA Nos. 11368/2016, 11370-11371/2016 & 15222/2016

HINDUSTAN STEELWORKS CONSTRUCTION
LTD.

..... Petitioner

Through: Mr G. Umapathy and Mr Aditya
Singh, Advocates.
versus

NTPC LTD. KAHALGOAN SUPER THERMAL POWER
STATION & ORS.

..... Respondents

Through: Mr I.S. Alag, Mr J.S. Lamba,
Advocates with Mr P.C. Vishwanathan,
AGM Law for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.12.2016**

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the order dated 11.02.2015 passed in appeal preferred against an order dated 30.03.2016.

2. Admittedly, the proceedings have emanated from an award rendered by an arbitrator under the Permanent Machinery of Arbitrations (PMA) created under the Government of India's Office Memorandum dated 12.06.2013 (as modified by office memorandum dated 24.03.2014). The learned counsel for the respondent has further submitted that in addition to the aforesaid memoranda, the

Government of India has also issued an Office Memorandum dated 07.12.2015 whereby it is directed that if the disputes remained unresolved even after the parties have exhausted their right of appeal, the same shall be referred to the Cabinet Secretariat for advice and under no circumstances should the cases be taken to Courts of Law.

3. The learned counsel for the respondent referred to the decision of the Supreme Court in **M/s Northern Coalfield Ltd. v. Heavy Engineering Corp. Ltd. and Anr.:** **Civil Appeal No.6296/2016, decided on 13.07.2016**, and on the strength submitted that the present petition would not be maintainable as it has been held that the mechanism under the PMA is outside the purview of the Arbitration and Conciliation Act, 1996.

4. A plain reading of the aforesaid judgment clearly indicates that the Supreme Court has unequivocally held that the decisions rendered under the PMA - the award and the decision in appeal therefrom - were not subject to the provisions of the Arbitration and Conciliation Act, 1996. This is clear from the following observation made by the Supreme Court:

"the Permanent Machinery of Arbitration was and continues to be outside the purview of Arbitration Act, 1940 now replaced by Arbitration and Conciliation Act, 1996".

5. The Supreme Court further observed as under:-

"..That is so because an arbitral award under the Permanent Machinery of Arbitration may give quietus to the controversy if the same is accepted by

the parties to the dispute. In cases, however, a party does not accept the award, as is the position in the case at hand, the arbitral award may not put an end to the controversy. Such an award being outside the framework of the law governing arbitration will not be legally enforceable in a court of law."

6. The learned counsel appearing for the petitioner also does not dispute that in view of the aforesaid decision, the present petition would lie. However, he further submits that in conformity with the decision of the Supreme Court in ***M/s Northern Coalfield Ltd. v. Heavy Engineering Corp. Ltd. and Anr.*** (*supra*), the disputes between the parties may be referred to the Sole Arbitrator. In my view, the said order cannot be passed without the consent of the parties. However, considering that the parties have been engaged in pursuing the dispute for a considerable period of time, it would certainly be advisable that the disputes be resolved by arbitration within the scope of Arbitration and Conciliation Act, 1996.

7. In view of the fact that the petitioner is willing to refer the disputes to the Sole Arbitrator, the Chairman Cum Managing Director of respondent company shall take a decision whether the disputes can be resolved by arbitration, within a period of four weeks from today. In the event that the parties agree to refer the disputes to the Sole Arbitrator, they would also endeavour to mutually appoint a Sole Arbitrator. In the event they are unable to do so, the parties are at liberty to approach this Court in accordance with law.

8. The petition is dismissed with the aforesaid observations.
9. Order *dasti*.

VIBHU BAKHRU, J

DECEMBER 07, 2016
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