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

+ **ARB.P. 648/2016**

VOLTAMP TRANSFORMERS LTD

..... Petitioner

Through: Mr A. K. Singla, Senior Advocate
with Mr Abhimanyu Singh Khatri,
Advocates.

versus

PATHBREAKING PROJECTS LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.12.2016

1. The respondent has been served. However, none appears on its behalf.
2. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to Purchase Orders dated 18.10.2011 and 15.03.2011.
3. The said Purchase Orders include an arbitration clause, which is set out below:-

“14. 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.”

4. The petitioner states that the parties attempted to amicably resolve the disputes. However, no such settlement was arrived at. Finally, the petitioner invoked the arbitration clause by a letter dated 18.04.2016. The petitioner has not received any response to the said letter.

5. In view of the arbitration agreement between the parties, an arbitrator is required to be appointed to adjudicate their disputes. Accordingly, Mr K.S. Khurana, ADJ (Retired), Mobile No. 9810257327 is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator's fees is fixed as per schedule IV to the Act.

6. The parties are at liberty to approach the Arbitrator for holding a preliminary hearing.

7. The petition is disposed of.

VIBHU BAKHRU, J

DECEMBER 22, 2016
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