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

+ **ARB.P. 60/2015**

KALPATARU POWER TRANSMISSION LTD Petitioner
Through: Mr. Ashish Dholakia, Ms. Anu Tiwari,
Mr. Sunil Mittal & Mr. D.Kishore Kumar,
Advocates.

versus

RISHI INFRA PROJECTS PVT LTD AND ORS. Respondents

CORAM: JUSTICE S.MURALIDHAR

ORDER
26.09.2016

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1. On 18th April 2016 this Court had passed the following ex parte order:

“Learned counsel for the petitioner admits that respondents No.2 & 3, who are the Directors of respondent No. 1, are not parties to the agreement.

Upon instructions, he has made the statement that the petitioner has no objection if their names be deleted from the array of the parties. He is allowed to file the amended memo of parties within one week.

The respondent-Company is served through publication. No one appears on its behalf; even reply was not filed. Under these circumstances, the matter is being proceeded further in its absence.

Brief facts are that on 1st April, 2011, the Eastern Railway issued Letter of Acceptance to M/s. KPTL-JMC-Yadav (Joint Venture) bearing Ref. No.CAO/Con/WT/8648 for construction work between Taljhari to Maharajpur. The Joint Venture was formally

entered at New Delhi vide Supplementary Agreement dated 30th March, 2011 among the petitioner, JMC and Yadav. As per the said Joint Venture, the petitioner was made the lead partner. The Joint Venture through Execution Agreement dated 5 April, 2011 delegated power up to the petitioner-Company to ensure timely and successful completion of the project. On 18th April, 2011, the petitioner entered into execution agreement with the respondent whereby the petitioner sub-contracted the entire project as per terms and conditions agreed.

It is submitted that in between May, 2011 to April, 2012, the petitioner made advances to the respondent-Company totalling to Rs.360.67 Lakhs as per clause 9 of the execution agreement. The petitioner due to non-completion of the project by the respondent-Company by notice dated 28th May, 2012 terminated the execution agreement and also called upon it to return Rs.91.89 Lakhs after deducting the value for the work done. On 29th July, 2012, the petitioner received reply from the respondent's counsel whereby the respondent demanded Rs.2.12 Crore from the petitioner. The respondent also proposed the name of Sh.G.P.Thareja (Retired District & Sessions Judge) as an arbitrator. On 23rd August, 2013, the petitioner replied to the said notice, stating that the Arbitrator's name as suggested by the respondent was not as per clause 23 of the Execution Agreement being the lead partner and proposed the name of Hon'ble Mr.Justice C.K.Thakkar,

Former Judge the Supreme Court of India. On 20th February, 2014, the petitioner invoked the arbitration clause as per clause 23 of the execution agreement appointing Hon'ble Mr. Justice C.K.Thakkar, Former Judge of the Supreme Court and requiring respondent to give consent within 30 days of the receipt of the notice. On 12th March, 2014, the petitioner again sent the arbitration notice to the respondent reiterating contents in the previous notice but to no response. Hence, the present petition has been filed by the petitioner under Section 11

of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator for reference and adjudication of the disputes that have arisen between the parties.

For the reasons stated in the petition coupled with the documents placed on the record, the prayer made in the petition is allowed. These are five petitions. The parties are same in all sets of disputes, thus, it is appropriate that single sole Arbitrator is to be appointed, in order to save time, cost and to avoid conflicting findings.

Accordingly, Mr. Justice S.S. Nijjar, Retired Judge of Supreme Court (Mobile No.9560453535) is appointed as sole Arbitrator to adjudicate the disputes arising between the parties as mentioned in the present petition as well as four other petitions. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the schedule under the amended Act. The parties to appear before the Centre on 20th May, 2016 at 5.00 pm for directions.

The petition is accordingly disposed of.

Copy of this order be given dasti to the learned counsel for the parties and a copy thereof be communicated to the learned Arbitrator forthwith.”

2. A letter dated 21st September 2016 has been received from Mr. Justice Surinder Singh Nijjar stating that due to unavoidable circumstances he is unable to act as an Arbitrator in these matters in terms of the order dated 18th April 2016 passed by this Court. It is seen that the initial appointment

by this Court is also an *ex parte* order.

3. The Court accordingly modifies the above order and appoints Mr. Justice K.S. P. Radhakrishnan, former Judge of the Supreme Court of India (Mob. No.9560013636) as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter claims. It is clarified that it will be for the learned Arbitrator to decide whether the arbitration should take place under the aegis of the Delhi International Arbitration Centre.

4. The learned Arbitrator is requested to endeavour to complete the arbitration within a period of twelve months from the date he enters upon reference.

5. A certified copy of this order be delivered to the learned Arbitrator forthwith.

SEPTEMBER 26, 2016
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S. MURALIDHAR, J.