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

+ **ARB.P. 61/2015**

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 25th February, 2011, the Rail Vikas Nigam Limited issued Letter of Acceptance along with rate sheet to M/s. JMC GPT- VIJAYWARGI Bright Power (Joint Venture) bearing Ref. No.RVNL/KOL/TMZ-BYSA/JMC-GPT-Vijaywargi-

Bright Power for construction work in Tamluk-Basulya Sutahata in Kharagpur Division of South Eastern Railway in the State of West Bengal. The Joint Venture was formally entered at Kolkata vide Supplementary Agreement dated 10th June, 2011 among M/s JMC Projects India Ltd., GPT Infra projects Ltd., Vijaywargi & Sons and M/s Bright Power Projects (India) Pvt. Ltd. As per the said Joint Venture, M/s JMC Projects India Ltd. was made the lead partner. M/s JMC Projects India Ltd. entered into Execution Agreement dated 22nd July, 2011 and delegated power up to the petitioner-Company to ensure timely and successful completion of the project. Thereafter, the petitioner vide Work Order dated 29th July, 2011 sub-contracted the part of the awarded project to the respondent-Company as per terms and conditions agreed.

It is submitted that in between July, 2011 to February, 2012, the petitioner made advances to the respondent-Company totalling to Rs.491.74 Lakhs as per clause 7 of the Work Order. The petitioner due to non-completion of the sub-contracted project by the respondent-Company by notice dated 29th May, 2012 cancelled the Work Order and also called upon it to pay Rs.310.71 Lakhs after deducting Rs.181.03 Lakhs, the value for the work done. The respondent replied the notice. Thereafter, by notice dated 29th July, 2013, the respondent through its counsel demanded Rs.1.75 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 19 of the Work Order and clause 22 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.