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

% **Order delivered on: 29th March, 2016**

+ **Arb.P. No.599/2015**

ARTSON ENGINEERING LIMITED Petitioner
Through Mr.Saswat Pattnaik, Adv. with
Ms.Shikha Bhardwaj, Adv.

versus

INDIAN OIL CORPORATION LIMITEDRespondent
Through Mr. Rajat Navet, Adv. with
Ms.Prachi Sharma, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of sole Arbitrator to adjudicate over the disputes that have occurred between the parties.
2. The petitioner is a public limited company engaged in the business of EPC basis fuel storage and handling facility systems related work. The petitioner is a sick Company as per the provision of Section 3 (1) (O) of the Sick Industrial Companies (Special Provisions) Act, 1985 under a Sanctioned Scheme of Rehabilitation dated 18th December, 2007. The respondent is engaged in the business of oil refining, pipeline transportation marketing of petroleum, research and development etc.

3. It is submitted that the petitioner was one of the bidders for the work of Storage Tanks and Associate Facilities Work for the PREAP Project for the respondent's Panipat Refinery. Thereafter, the petitioner was awarded the Agreement No. PJ/CC/Tankage/PREAP/63 of 2008-2009 dated 19th March 2009 (hereinafter referred to as the 'Contract') by the respondent vide its Fax of Acceptance (FOA). The FOA specified that the contractual time for completion of the work shall be 12 (twelve) months from the date of the FOA i.e. 18th March, 2010. Accordingly, the petitioner was required to complete its scope of works in all respects on 18th March, 2010. The respondent accepted the petitioner's offer on the terms and conditions contained in the Tender Documents, Technical Corrigendum and Schedule of Rates.

4. However, the respondent failed and neglected to perform its obligations under the Contract resulting in delay in completion of the petitioner's scope of works.

5. By letter dated 2nd June, 2011 the petitioner recorded that on 18th May, 2011 the petitioner handed over two tanks viz. TK-98-TT-FR-001G and H Naptha and subsequently, on 14th May, 2011 petitioner handed over one more tank viz. TK-46-TT-FR-001G. The pre-final bill and the final bill were submitted by the petitioner to the respondent on 24th March, 2011 and 31st March, 2011 respectively.

6. It is stated that by letter dated 14th February, 2012 the respondent asked the petitioner to pay an amount of Rs.2,15,81,600/- towards price discount by 28th February, 2012 otherwise the said amount would be recovered by the respondent from the bank guarantees submitted by the petitioner for non-reduction of PRS form/pre-final bill/final bill pending

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the resolution for the petitioner's submissions for considering extension of time on the project.

7. However, respondent neither waived the said amounts claimed by the petitioner nor responded to the petitioner's representations. The petitioner's letters dated 28th June, 2012 and 24th July, 2012 initiating arbitration were also returned to the petitioner. Thereafter, the petitioner initiated the Dispute Resolution Clause through arbitration under Clause 9 of the GCC vide its letter dated 21st June, 2013 wherein the petitioner asked the respondent to nominate 3 Arbitrators. The respondent provided the petitioner with three names out of which Mr. Rajesh Ahuja was appointed as sole Arbitrator on 19th August, 2013.

8. Relevant clauses of the contract with respect to Arbitration has been reproduced here as under:-

"9.0.1.0 –Arbitration

Subject to the provisions of Clauses 6.7.1.0, 6.7.2.0 and 9.0.2.0 hereof, any dispute arising out of a Notified Claim of the CONTRACTOR included in the Final Bill of the CONTRACTOR in accordance with the provisions of Clause 6.6.3.0 hereof, if the CONTRACTOR has not opted for the Alternative Dispute Resolution Machinery referred to in Clause 9.1.1.0 hereof, and any dispute arising out of any Claim(s) of the OWNER against the CONTRACTOR shall be referred to the arbitration of a Sole Arbitrator selected in accordance with the provisions of Clause 9.0.1.1. hereof. It is specifically agreed that the OWNER may prefer its Claim(s) against the CONTRACTOR as counter claim(s) if a Notified Claim of the CONTRACTOR has been referred to arbitration. The Contractor shall not, however, be entitled to raise as a set-off defence or counterclaim any claim which is not a Notified Claim included in the Contractor's Final bill in accordance with the provisions of Clause 6.6.3.0. hereof.

vi. Clause 9. 0.1.1

The Sole Arbitrator referred to in Clause 9. 0.1. 0 hereof shall be selected by the CONTRACTOR out of a panel of 3 (three) persons nominated' by the OWNER for the purpose of such selection, and should the CONTRACTOR fail to select an arbitrator within 30 (thirty) days of the panel of names of such nominees being furnished by the OWNER for the purpose, the Sole Arbitrator shall be selected by the OWNER out of the said panel.

9. The sole Arbitrator after presiding over the arbitral proceedings vide letter dated 18th April, 2014 expressed his inability to continue as the sole Arbitrator for the reason he being unable to devote adequate time and attention to the Arbitration due to official pre-occupations and administrative exigencies.

10. Thereafter, on 1st August, 2014 Mr. V.K Rai was appointed as the sole Arbitrator and after presiding over the arbitral proceedings by email dated 21st January, 2015 Mr. Rai informed the petitioner that he had superannuated from the services of Indian Oil Corporation Limited on 31st October, 2014

11. It is stated that the petitioner had made various representations to the respondent to either negotiate a settlement or to continue with the arbitration. But, neither were there any negotiations to a settlement nor any further appointment of any arbitrator from the side of the respondent so that the arbitration proceeding could continue. It is further stated that there has been a considerable delay in the arbitration and the proceedings are still at the initial stage.

12. It is stated that the respondent has failed to comply with its contractual obligations to appoint another Arbitrator in accordance with

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the procedure prescribed under Clause 9 of the GCC. Hence, the present petition has been filed.

13. Reply has not been filed by the respondent.

14. In view of the reasons stated in the petition, the same is allowed.

15. Mr. Koka Raghava Rao, Senior Advocate (Mob. 9971259053) (E-mail- kokaraghavarao@yahoo.com) is appointed as sole Arbitrator to adjudicate the disputes between the parties, in place of earlier Arbitral Tribunal.

16. The Arbitrator shall also file an affidavit of "no conflict of interest".

17. The arbitration shall take place under the aegis of Delhi International Arbitration Centre ('DAC'). 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 Delhi International Arbitration Centre (Administrative Cost Arbitrator's Fees) Rules.

18. The learned Arbitrator would continue the proceedings at the stage left by the earlier sole Arbitrator. The terms and conditions would remain the same.

19. The petitioner would collect the record from earlier Arbitral Tribunal in sealed cover and submit the same before DAC.

20. The petition is disposed of accordingly. No costs.

21. Copy of the order be given *Dasti* to both the parties and a copy thereof be communicated to the learned sole Arbitrator forthwith.


(MANMOHAN SINGH)
JUDGE

MARCH 29, 2016