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

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O.M.P. (T) (COMM.) 6/2017

POWER GRID CORPORATION OF INDIA LTD. Petitioner
Through: Mr. Tushar Mehta, ASG with Ms. Manmeet
Singh & Ms. Shreya Singhal, Advocates.

versus

DEEPAK CABLES (INDIA) LIMITED (DCIL) Respondent
Through: Dr. P.C. Markanda, Senior Advocate with
Mr. Rajesh Markanda, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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ORDER
25.01.2017

IA No.1055/2017 (Exemption)

1. Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 6/2017 & IA No.1054/2017

2. This is a joint application by both the Petitioner and the Respondents under Section 14(2) read with Section 15 of the Arbitration & Conciliation Act, 1996 (Act) which has been filed in peculiar circumstances. It is supported by the affidavits of the authorised representatives of both parties.

3. Both the parties are involved in nine disputes concerning contracts executed in different regions of the country and these disputes have been referred for adjudication to different Arbitral Tribunals (ATs), one for each of the Northern, Eastern, Western, Southern and North Eastern regions. The

present petition pertains to the arbitration proceedings for the disputes concerning the Northern region.

4. An agreement entered into between the parties at a meeting held on 27th May, 2016 and it was decided to consolidate the nine arbitration proceedings, including the one concerning the Northern region before one common AT. This was with the object of ensuring an expeditious and cost-effective disposal. On that basis an application was filed before the AT that was seized of the disputes concerning the Northern Region praying that it should declare its mandate as having been terminated. Similar applications appear to have been filed before the other ATs as well.

5. While orders on such applications have been reserved by the ATs for the Eastern region and Southern region, the AT which was dealing with the dispute concerning the Western region allowed such application and terminated its mandate. However, the AT seized of the disputes concerning the Northern Region rejected the said joint application of the parties by an order dated 8th December 2016, a copy of which has been placed on record. The AT has based its rejection on its perception that the grounds on which the AT's mandate was being terminated was not, in fact, made out by the parties. While the AT acknowledged the autonomy of the parties in that the agreement between them has to be given "a primordial position" in its perception, "such autonomy and agreement has to be exercised in consonance with other provisions intended to preserve public faith, impartially and objectivity in the arbitral process."

6. Having heard Mr. Tushar Mehta, learned ASG appearing for the

Petitioner and Dr P C Markanda learned Senior counsel for the Respondent, the Court is unable to appreciate the above position taken by the AT in declining to act on an agreement between the parties to terminate its mandate. In fact, it was not within the scope of the powers of the AT to decide on whether the parties could by agreement terminate the mandate of the AT.

7. Section 14(1)(b) of the Act makes it explicit that where the parties so agree, the mandate of an arbitrator "shall terminate". Under Section 15 (1) (b) the mandate of an Arbitrator "shall terminate" by or pursuant to agreement of the parties. Additionally, under Section 32 (2) (b) of the Act, there is a statutory requirement for the AT to issue an order of termination of its proceedings when the "parties agree on the termination of the proceedings." All that the AT was required to do was to enquire into whether, in fact, there was an agreement between the parties to terminate its mandate. With there being a joint application before the AT, that question simply did not arise. It gets further reinforced by the fact that even the present application is a joint application by both the parties.

8. In the circumstances, there was no occasion for the AT to review the reasons that weighed with the parties in deciding to terminate its mandate, whatever such reasons may have been. The Court, therefore, has no hesitation in holding that the order dated 8th December, 2016 passed by the AT in the present case is entirely without jurisdiction and unsustainable in law. With the parties being in agreement that their disputes in a consolidated manner should be adjudicated by a common AT, the question of an AT

before whom one strand of the dispute is pending interdicting that process does not arise.

9. In that view of the matter, the petition is allowed and the order dated 6th December 2016 of the AT is set aside. The mandate of the three-member AT which has been constituted to adjudicate the disputes arising between the parties in respect of the contract for the Northern region hereby stands terminated. The application is disposed of.

JANUARY 25, 2017
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S. MURALIDHAR, J.

