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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 215/2017
AMR INDIA LTD. (FORMERLY KNOWN AS AMR
CONSTRUCTIONS LTD.) Petitioner
Through Mr.Arvind Kumar Gupta, Ms.Alpana
Malik & Mr.Sagar Mittal, Advocates

versus

NABINAGAR POWER GENERATING CO.
PVT. LTD. Respondent
Through Mr.G.K.Mishra, Mr.A.Mitra &
Ms.Monika Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
24.05.2017

1. The present petition is filed under Section 11(6) and (8)(B) of the Arbitration & Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) for appointment of a sole arbitrator to adjudicate the disputes and differences between the parties arising out of the Contract dated 04.07.2011.
2. The respondent company floated a tender and bid was invited for the subject package, i.e. "Site Leveling and Infrastructure Work". The bid of the petitioner was accepted on 11.05.2011. The parties executed the contract agreement dated 04.07.2011. Disputes having been arisen between the parties. The petitioner invoked the arbitration clause. On 29.03.2014, the petitioner addressed a communication to the concerned General Manager, NTPC Ltd. by which the respondent was requested to enter into reference upon the arbitration and indicate the time and date for first hearing.

3. There exists an arbitration clause between the parties, which reads as follows:

“56. Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the' contract, designs drawing, specifications, estimates, instructions orders or these conditions of otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager of NTPC Limited (Formerly National Thermal Power Corporation ltd)., and if the General Manager is unable or unwilling to act, to the sole arbitration of some other person appointed by the Chairman and Managing Director, NTPC Limited (Formerly National Thermal Power Corporation ltd)., willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of NTPC Limited (Formerly National Thermal Power Corporation Ltd)., and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason as aforesaid at the time of such transfer, vacation of office or inability to act, Chairman and Managing Director, NTPC Limited (Formerly National Thermal Power Corporation Ltd)., shall appoint another person to act as arbitrator in accordance with the terms of the Contract. It is also a term of this Contract that no person other than a person appointed by CMD., NTPC Ltd. as aforesaid should act as arbitrator and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.

.....”

4. I have heard the learned counsel for the parties.
5. The learned counsel for the respondent submits that there was some delay on the part of the respondent in appointing the arbitrator as the petitioner had approached for settlement of the disputes. He however, submits that the respondent has now appointed Sh.M.S.Yadav, GM (Commissioning), NPGC as a sole arbitrator vide communication dated 13.04.2017.
6. The learned counsel for the petitioner submits that steps have been taken by the respondent admittedly after the present petition under Section 11 of the Act was filed on 20.03.2017. He further points out that the General Manager who has now been appointed as the sole arbitrator, namely Sh.M.S.Yadav is the General Manager of the respondent. He submits that the appointment of such a person is hit by Section 12(5) of the Act read with Schedule Seventh of the Act.
7. The legal position in this regard is settled by catena of judgments. The Supreme Court in the case of ***Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Anr., (2000) 8 SCC 151***, and ***Deep Trading Company v. Indian Oil Corporation & Ors., (2013) 4 SCC 35*** has held that where despite invocation of arbitration clause, the party does not appoint an arbitrator before filing of the petition under Section 11 of the Act, he loses his right to appoint an arbitrator.
8. So far as other submission of the learned counsel for the petitioner is concerned, there is merit in the same also. Under Schedule Seventh of the Act, an arbitrator who is an employee of the party is ineligible to be appointed an arbitrator.

9. However, in view of the legal position already stated above, the appointment of the arbitrator by the respondent was without any merit and unfounded and the communication is no-nest.

10. Accordingly, I appoint Mr.Justice Vikramajit Sen (Retd.) (Mobile No.9818000290) as the sole arbitrator to adjudicate the disputes and the differences between the parties arising out of the Contract dated 07.04.2011. The learned arbitrator is requested to comply with the provision of Section 12(i) of the Act. The learned arbitrator may fix his fees in consultation with the learned counsel for the parties.

11. Parties are directed to appear before the learned arbitrator on 12.07.2017 at 4.00 p.m. Copy of the order be sent to the learned arbitrator.

The petition is accordingly disposed of.

JAYANT NATH, J.

MAY 24, 2017/v