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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 241/2017**

NAGARJUNA AGRICHEM LIMITED Petitioner
Through Mr Mrinal Ojha, Advocate with
Ms Trinath Tadakamalla, Advocates.

versus

THE ORIENTAL INSURANCE CO. LTD. Respondent
Through Mr Rassherman Rao and Mr Arjun
Masters, Advocates.
Mr Saram Priya, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.05.2017**

1. This is a petition filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to Insurance Policies dated 23.04.2012 and 01.08.2012. The said policies include a similarly worded arbitration clause which is set out below:-

"If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the

Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.”

2. Although, the arbitration clause envisages disputes to be resolved by an arbitral tribunal of three members, the counsel for the parties state, on instructions, that the parties are agreeable that a sole arbitrator be appointed. It is suggested that Justice Aftab Alam (Retired) a former Judge of the Supreme Court, be appointed as the sole arbitrator to adjudicate the disputes between the parties. The learned counsel concur with the aforesaid suggestion.

3. Accordingly, with the consent of parties, Justice Aftab Alam (Retd.) is appointed as a sole arbitrator to adjudicate the disputes that have arisen between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator's fees shall be fixed in consultation with the parties. The parties are at liberty to approach the arbitrator for further proceedings.

4. It is clarified that all contentions of the parties are reserved as to the maintainability as well as merits of the claims. The parties would also be at liberty to approach the arbitrator to frame a preliminary issue as to the maintainability of the claims.

5. The petition is disposed of.

VIBHU BAKHRU, J

MAY 30, 2017/pkv