

\$~1(of 14.08.2017)

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

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Judgment delivered on: 16.08.2017

+ ARB.P. 397/2017

M/S. AKHANDJYOTI TRANSMISSION AND
DEVELOPERS LIMITED

..... Petitioner

versus

ARAVALI INFRAPOWER LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pankul Nagpal, Advocate.

For the Respondent : Mr. Sanjay Kothiyal, Advocate.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT
16.08.2017**

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner, by this petition, under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks appointment of an independent sole arbitrator.

2. Work orders No. AIPL/DTL-121/Erec/PT-14/13-14/117 and revised work order No. AIPL/DTL-121/Erec/PT-014/10-11/16 for erection of the towers at various site/locations at Wazirabad 220 KV Line, Jabalpur Sukha 400 KV Line, Wazirabad line dismantling and

the various sites on Maharani Bagh to Ghazipur 220 KV line was awarded to the petitioner.

3. As per the petitioner, the contract was duly executed. However, certain bills/invoices, raised by the petitioner, are stated to be pending. The petitioner called upon the respondent to pay the outstanding amount of the bills. On failure of the respondent to pay the sum, the petitioner invoked the arbitration by a Statutory Notice dated 02.11.2016.

4. Learned counsel for the respondent submits that post the Statutory Notice dated 02.11.2016, parties were mediating for an amicable resolution. He submits that the resolution could not be arrived at between the parties.

5. Learned counsel for the respondent submits that after failure of the mediation proceedings, fresh notice of invocation has not been issued by the petitioner.

6. The arbitration clause, as contained in the subject work orders, reads as under:-

“14. Arbitration Clause:- In the event of any disputes or differences arising out of relating to or with reference to or in connection with this Work Order shall be resolved through mutual discussion. If the dispute is not resolved through discussion within a period of one month from the date of rising of dispute then it shall be referred to a Sole Arbitrator appointed by the AIPL only, whose award shall be final and binding on the parties. The venue of arbitration shall be at Delhi/New Delhi only and the arbitration proceedings shall be in accordance with the Arbitration & Conciliation Act, 1956 or any statutory enactment thereof. For the purpose of giving effect to the arbitral award and in relation to the arbitration only courts in Delhi/New Delhi shall have jurisdiction.”

7. The petitioner, in terms of the arbitration clause, had issued a Statutory Notice dated 02.11.2016. Receipt of the notice is not disputed, in fact, the respondent has even replied to the same. The only objection raised by the respondent is that after the failure of the mediation between the parties, the petitioner was obliged to give a fresh notice invoking arbitration.

8. I am unable to accept the contention of the learned counsel for the respondent. The arbitration clause stipulates that on disputes/differences arising, the parties shall endeavour to resolve the same through mutual discussion/dialogue. If the disputes are not resolved through discussion within a period of one month from the

date of rising of the disputes, the same shall be referred to the Sole Arbitrator.

9. The petitioner duly invoked the arbitration clause between the parties. Consequent to invocation, the parties attempted to resolve their disputes by mutual discussion. It is an admitted position that the discussions were not successful and disputes could not be resolved.

10. The arbitration clause, as referred to hereinabove, does not contemplate issuance of a fresh notice after the failure of the discussion. All it stipulates is that if the discussion is not successful, the disputes shall be referred to the Sole Arbitrator within a period of one month from the rising of the disputes.

11. In my view, the petitioner has satisfied the pre-condition for the invocation of the arbitration clause. Mere, non-issuance of a second notice post the failure of the discussion, would not nullify the effect of the first invocation by the petitioner by the Statutory Notice dated 02.11.2016, accordingly, a sole arbitrator is required to be appointed.

12. Learned counsel for the respondent, at this stage, submits that in view of the findings returned above, he has no objection to an

independent sole arbitrator being appointed by this Court.

13. Accordingly, Mr. N.P. Kaushik (Retd.) former Additional District Judge (Mobile No. 9910384663) is appointed as the Sole Arbitrator subject to the Arbitrator making the necessary disclosure under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

14. The Arbitrator shall adjudicate the claims of the petitioner and the counter claims, if any of the respondents.

15. The fee of the Arbitrator shall be fixed as per the Fee Schedule of the Delhi International Arbitration Centre, Delhi High Court, New Delhi.

16. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

17. The petition is, accordingly, disposed of.

18. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 16, 2017/st