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

+ ARB.P. 288/2017

M/S PREDOMINANT ENGINEERS AND
CONTRACTORS PVT. LTD.

..... Petitioner

Through Gaurav Duggal, Advocate.

versus

M/S TRIMULA INDUSTRIES LIMITED

..... Respondent

Through Ms. Charu Sangwan and Mr. Ritesh Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.05.2017**

1. The petitioner has filed the present petition under Section 11 (6) (a) of the Arbitration and Conciliation Act, 1996 *inter alia* praying that an arbitral tribunal be appointed to adjudicate the disputes that have arisen between the parties in view of agreements - three in number - dated 12.08.2009. The said agreements were entered into for providing technical know-how, designs and engineering services for setting up of a 38.5 MW power plant, supply of equipment and for erection and commissioning. The agreements for providing technical knowhow, designs, engineering services as well as for supply of equipment contain an arbitration clause. However, the said agreement for erection of equipment does not contain an arbitration clause.
2. Learned counsel for the petitioner states that all the three contracts form a composite contract although the scope of work under each agreement

is different. He has also drawn the attention of this court to the arbitration clause contained in two of the three agreements, which is very widely worded.

3. The learned counsel for the respondent has opposed the present petition essentially on two grounds. First, she submits that the agreement for erection of the equipment does not contain an arbitration clause and therefore, an arbitrator cannot be appointed. Second, she states that request of the petitioner invoking the arbitration clause by naming its arbitrator is not in conformity with the arbitration clause; she states that the arbitration clause did not permit the petitioner to unilaterally appoint/name an arbitrator.

4. It is apparent from the above that there is no dispute as to the existence of the arbitration clause in respect of the agreement for providing engineering services and for supply of equipment. It is also not in dispute that the petitioner has invoked the arbitration clause, however, the parties have not been able to concur on appointment of an arbitrator.

5. In the circumstances, it is necessary that an arbitrator be appointed. Accordingly, Justice Anil R. Dave (Retired) (Mobile No. 9560309393) former Judge of the Supreme Court is appointed as the sole arbitrator to adjudicate the disputes between the parties in connection with the technical knowhow, designs and engineering services contract and the contract for supply of equipment, both dated 12.08.2009. 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 will fix his fee in

consultation with the parties. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosure and for further proceedings.

6. It is clarified that all contentions of the parties are open including the scope of arbitration clause.

7. The petition stands disposed of.

VIBHU BAKHRU, J

MAY 30, 2017
dr