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

+ **O.M.P. (T) (COMM.) 70/2016**

INDRAPRASTHA POWER GENERATION COMPANY
LTD. & ANR.

..... Petitioners

Through: Mr A. S. Dateer, Advocate.

versus

INDUSTRIAL FUEL RESEARCH
CORPORATION

..... Respondent

Through: Mr P. S. Bindra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.02.2017

1. The petitioner has filed the present petition under Section 14 & 15 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act'), *inter alia*, praying that the mandate of the Arbitrator be declared to have terminated and to appoint another Arbitrator in place of the Sole Arbitrator, Shri R. P. Bhatia, Ex. Additional Chief Engineer/DBV. It is stated that the pleadings and evidence were complete in the matter and after the parties had been heard, Mr Bhatia, the Sole Arbitrator, reserved the matter for publication of award on 30.06.2014. Thereafter, no communication was received from the Arbitrator. Since the Arbitrator had failed to make the award, the petitioner sent a letter dated 20.10.2008 - i.e. more than four years after the Arbitrator had reserved the matter - requesting the Arbitrator to dispose of the matter. The petitioner claims that two other letters were also sent on 20.10.2008 and 13.11.2008, however, the Arbitrator did not publish the award. The

petitioner did not pursue the matter for almost seven years. Thereafter, the petitioner sent another letter dated 04.09.2015 once again requesting the Arbitrator to dispose of the matter.

2. In the facts of the above case, it is clear that the Arbitrator has failed to act in terms of his appointment and, accordingly, his mandate to act as such is terminated.

3. With the consent of the learned counsel for the parties, Mr Vikas Dhawan, Advocate is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. Mr Bhatia is directed to furnish all documents as available with him to the learned counsel for the parties who shall file the same with Mr Vikas Dhawan. In the event, such documents are not available, the parties shall make effort to re-construct the same and the arbitration shall proceed on the basis of the material filed before the Arbitrator.

4. The Arbitrator shall fix his fees in consultation with the learned counsel for 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.

5. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 16, 2017
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