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

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Judgment delivered on: 24.07.2017

+ ARB.P. 403/2017

HINDUSTAN CONSTRUCTION COMPANY LTD. Petitioner

versus

INDIAN STRATEGIC PETROLEUM RESERVES LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner

: Ms. Malvika Lal, Advocate.

For the Respondent

: Ms. Madhru Yadav, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

24.07.2017

SANJEEV SACHDEVA, J. (ORAL)

IA No.7029/2017 (exemption)

Exemption is allowed subject to all just exceptions.

ARB.P. 403/2017

1. The petitioner, by the present petition, under Section 11 of the Arbitration & Conciliation Act, 1996 seeks appointment of an independent sole arbitrator to adjudicate the disputes between the parties arising out of a contract dated 30.07.2010.

2. The petitioner was awarded a contract for execution of civil works for underground rock caverns (Part-A) for strategic storage of

crude oil project at Padur, Karnataka, the subject project. A formal contract agreement was executed between the parties on 30.07.2010.

3. Disputes have arisen between the parties. On 24.02.2017, the petitioner invoked the arbitration clause.

4. The arbitration clause, as contained in the General Conditions of Contract, applicable to the subject contract, reads as under:-

“9.0.0.0 Arbitration

9.0.1.0 Subject to the provisions of Clauses 6.7.1.0, 6.7.2.0 and 9.0.1.1 hereof, any dispute arising out of a Notified Claim of the CONTRACTOR included in the Final Bill of the CONTRACTOR in accordance with the provisions of Clause 6.6.3.0 hereof, if the CONTRACTOR has not opted for the Alternative Dispute Resolution Machinery referred to in Clause 9.1 1 0 hereof, and any dispute arising out of any Claim(s) of the OWNER against the CONTRACTOR shall be referred to the arbitration of a Sole Arbitrator selected in accordance with the provisions of Clause 9.0.1.1 hereof. It is specifically agreed that the OWNER may prefer its Claim(s) against the CONTRACTOR as counter-claim(s) if a Notified Claim of the CONTRACTOR has been referred to arbitration. The CONTRACTOR shall not, however, be entitled to raise as a set-off defence' or counter-claim any claim which is not a Notified Claim included in the CONTRACTOR's Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof.

9.0.1.1 The Sole Arbitrator referred to in Clause 9.0 1.0 hereof shall be selected by the CONTRACTOR out of a panel of 3 (three) persons nominated by the OWNER for the purpose of such selection, and should the CONTRACTOR fail to select an arbitrator within 30 (thirty) days of the panel of

names of such nominees being furnished by the OWNER for the purpose, the Sole Arbitrator shall be selected by the OWNER out of the said panel.”

5. Learned counsel for the petitioner submits that by the notice inviting arbitration, the petitioner requested the respondents to suggest a panel of three persons so that the petitioner could select one of the three as the arbitrator. It is contended that on the failure of the respondents to even suggest the panel of three persons, the present petition was filed.

6. Learned counsel for the respondents submits that the respondents have no objection to an independent arbitrator being appointed by the Court to adjudicate the disputes between the parties.

7. With the concurrence of the parties, Mr. Justice A.R. Dave (Retired), Former Judge of the Supreme Court of India, is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosures under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

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

9. The Arbitrator shall fix his fee in consultation with learned counsel for the parties.

10. The parties are at liberty to approach the learned Arbitrator for

elucidating the necessary disclosures and for further proceedings.

11. The petition is accordingly disposed of.

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

SANJEEV SACHDEVA, J

JULY 24, 2017
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