

\$~3

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

%

Judgment delivered on: 09.08.2017

+ ARB.P. 381/2017

FLORA ENERGY

..... Petitioner

versus

SUZLON ENERGY LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner

: Mr. D.P. Singh and Ms. Ishita Jain, Advs.

For the Respondents

: Mr. Kumar Mihir and Mr. Paras Choudhary, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

09.08.2017

1. The petitioner has filed this petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of independent Sole Arbitrator.
2. The petitioner purchased a wind mill; WTG of 1250 KW rating type Suzlon 870 from the Respondent Company and had entered into a purchase order cum purchase agreement dated 06.04.2005 with the Respondent.
3. Disputes with regard to said agreement arose between the parties leading to the petitioner invoking the arbitration vide notice dated 10.03.2017.

4. The purchase order cum purchase agreement dated 06.04.2005, inter-alia, contains the following general terms:-

"12. General Terms:

- That this agreement is subject to jurisdiction of Delhi.*
- That this agreement is subject to Force Majeure conditions.*
- That this agreement is subject to Standard Arbitration."*

5. The petitioner invoked the arbitration vide notice dated 10.03.2017.

6. The respondent, inter-alia, objected to the invocation of arbitration by contending that there was no arbitration clause between the parties. In its reply, the respondent contended that there was no valid arbitration agreement and thus there was no cause for issuance or invoking of the arbitration clause of the purchase order cum purchase agreement.

7. Learned counsel for the respondent submits that there is no specific arbitration clause between the parties.

8. Section 7 of the Act defines arbitration agreement as under:-

"Section 7 - Arbitration agreement —

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an

arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

9. Perusal of Section 7 of the Act shows that there is no specific format prescribed for an arbitration clause or an Arbitration Agreement. All that it is required to constitute an arbitration clause is that there should be an agreement in writing, it could be contained in a document signed by the parties or in exchange of letters or be contained in an exchange of statements of claim and defence where it is alleged to exist and not denied.

10. In the instant case, Clause 12 of the purchase order-cum-purchase agreement dated 06.04.2005, referred to above, clearly states

that the agreement is subject to standard arbitration. The fact that parties have referred in the "General terms" to the agreement being subject to Standard Arbitration manifests the intention of the parties that the agreement is to be governed by the Arbitration Act.

11. The parties, in my view, have agreed to settlement of their disputes through the process of arbitration. Else, there was no purpose of making the agreement subject to Standard Arbitration. Clause 12 constitutes "General Terms" constitutes an arbitration agreement as is contemplated by Section 7 of the Act. Accordingly the objections raised by the respondent cannot be sustained.

12. Learned counsel for the respondent submits that in view of the finding rendered by this court, he agrees to the appointment of a Sole Arbitrator.

13. Accordingly, with the consent of the parties, Mr Justice S.B. Sinha, former Judge of the Supreme Court of India (Mobile No. 95682119666), office at D-96, Basement Defence Colony, New Delhi, is appointed as the Sole Arbitrator to adjudicate the disputes between the parties 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 Arbitrator shall fix his fee in consultation with learned

counsel for the parties.

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.

AUGUST 09, 2017

TS

SANJEEV SACHDEVA, J

