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

+ **ARB.P. 823/2016**

RENEWABLE ENERGY SYSYTEMS LIMITED Petitioner
Through **Mr.Sumesh Dhawan, Ms.Vatsala Kak**
& Ms.Jasvind Dhama, Advocates

versus

BHARAT SANCHAR NIGAM LIMITED Respondent
Through **Mr.Samdarshi Sanjay, Advocate**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.09.2017

1. This petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. On 20.11.1995, the petitioner is said to have entered into a lease agreement with the respondent for lease of 6380 Nos. of Solar Power Generating Systems for a period of 5 years.
3. As disputes having arisen between the parties, the petitioner has invoked the arbitration clause on 17.08.2016. Clause 31 of the lease agreement dated 20.11.1995 has an arbitration clause where the disputes are to be referred to the sole arbitration of the Director General of Department of Telecommunications.
4. The learned counsel for the petitioner objects to the appointment pointing out that the claim of the respondent is hopelessly barred by

limitation. He also submits that the said agreement come to an end by efflux of time in 2000 and now in 2016 the arbitration clause has been invoked.

5. The learned counsel for the petitioner stressed that under the recent amended Section 11(6)(A) of the Act, the court has to only examine the existence of an arbitration agreement. Hence, he submits that the issue of limitation etc. would not be relevant. He further submits that the equipments which were handed over to the respondent were never returned after the alleged efflux of the agreement in 2000 and the respondent continued to retain the equipments. Hence, cause of action continues.

6. After some argument, the learned counsel for the parties agree that matter be referred to the sole arbitrator subject to the right of the parties to raise the issue of limitation as per law before the arbitrator. It is pointed out that the said Director General being an employee of the respondent is ineligible to be appointed as an arbitrator.

7. Accordingly, Ms.Justice. Sunita Gupta (Retd.) (Mobile No.9910384628) is appointed as a sole arbitrator to adjudicate the disputes between the parties. The arbitration proceedings will be held under the aegis of the Delhi International Arbitration Centre, New Delhi (*hereinafter referred to as 'the DIAC'*). Copy of this order be sent to the DIAC.

The petition stands disposed of.

JAYANT NATH, J.

SEPTEMBER 05, 2017/v