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

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Judgment delivered on: 25.09.2017

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ARB.P. 488/2017

KASHIPUR AGRO INDUSTRIES PRIVATE LIMITEDPetitioner

Versus

NATIONAL SEEDS CORPORATION LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner: Mr Anant Agarwal and Ms Chaanjeet Kaur Bhatia

For the Respondent : Mr Yashvardhan, Ms Smita Kant, Mr Ambuj Dixit,
Mr Ankit Goel and Ms Kritika Angirish

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

25.09.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner, by this petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. Agreement for supply of wheat seed was entered into between the petitioner and respondent on 09.02.2016.

3. As per the petitioner, the respondent failed to pay the entire price of the seeds lifted from the petitioner and further failed to lift the

agreed quantity of seeds from the petitioner.

4. Accordingly, disputes arose between the parties and the petitioner invoked the Arbitration Clause.

5. The relevant Arbitration Clause, as agreed to between the parties, reads as under:-

“35). Settlement of disputes:

*All disputes in relation to the E.O.I., the contract or the interpretation of any of their terms or implementation there-of or arising out of or concerned directly or indirectly with the contract/E.O.I. shall be referred to the Sole arbitrator to be appointed by the Chairman-cum-Managing Director of the Corporation/ organizer and in the absence of CMD, the highest Executive Officer of the Corporation shall make such appointment. The venue of arbitration shall be **at New Delhi**. The court of law **at the New Delhi/Delhi** alone will have jurisdiction in the matter of any disputes whatsoever.*

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6. The petitioner invoked arbitration by notice dated 24.04.2017 with a reminder dated 30.05.2017 to the Chairman-cum-Managing Director to appoint an Arbitrator within thirty days of the receipt of the notice.

7. On the failure of the Chairman-cum-Managing Director to appoint an Arbitrator, in terms of Clause 35, the petitioner filed this petition on 01.08.2017 after furnishing an advance copy to the

respondent.

8. Notice was directed to be issued on 08.08.2017.

9. In the reply, respondents have contended that in terms of Clause 35, Arbitrator has been appointed by the highest Executive Officer of the Corporation as the Chairman-cum-Managing Director was not in Office, however, the said appointment was subsequently ratified by the Chairman-cum-Managing Director on 22.08.2017.

10. Learned counsel for the petitioner relies on the decision of the Supreme Court in **DATAR SWITCHGEARS LIMITED VERSUS TATA FINANCE LIMITED**, 2000(8) SCC 151, wherein the Supreme Court has held that in cases arising under Section 11(6), if the respondent has not made an appointment within thirty days of the demand, the right to make an appointment is not automatically forfeited but continues, however, such right has to be exercised prior to the petitioner filing the application under Section 11 seeking appointment of an Arbitrator. It is contended that on filing of the Section 11 application, right to appoint an Arbitrator, in terms of the Arbitration Clause, ceases.

11. Learned counsel for the petitioner contends that since the appointment was made by the respondent, after the petitioner had filed the petition under section 11 of the Act and advance copy of the same was delivered to the respondent, respondent has forfeited the right to appoint an Arbitrator.

12. In view of the judgment of the Supreme Court in **DATAR SWITCHGEARS LIMITED** (*supra*), without raising any aspersions on the Arbitrator appointed by the respondent, it is held that the right of the respondent to appoint an Arbitrator, as conferred by Clause 35 of the Agreement between the parties, ceased with the petitioner filing this petition and the appointment made post the same is non-est.

13. Thus, arbitrator is required to be appointed by Court.

14. Accordingly, it is directed that the Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre.

15. The parties shall appear before the Coordinator, Delhi International Arbitration Centre on 12th October, 2017 at 11 AM.

16. The Arbitration shall be conducted under the aegis of Delhi International Arbitration Centre in accordance with law.

17. The petition is allowed in the above terms.

18. *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 25, 2017

‘Sd’