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

+ **ARB.P. 824/2016**

HPCL- MITTAL ENERGY LIMITED Petitioner

Through: Mr Kartik Nayar and Ms Sonali
Mehta, Advocates.

versus

NSSL PRIVATE LIMITED Respondent

Through: Mr Ravi Bharuka, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **23.02.2017**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* for appointment of an arbitrator to adjudicate the disputes between the parties in relation to letter of awards (LOAs) dated 15.06.2009 and 20.07.2009. The General Conditions of the Contract as applicable to the agreement between the parties includes an arbitration clause which is set out below:-

"37. ARBITRATION:

37.1 All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the LOI/FOI/Purchase ORDER, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the LOI/FOI/Purchase Order or whether before or after determination, foreclosure, termination or breach of the

LOI/FOI/Purchase Order (other than those in respect of which the decision of any person is, by the Contract, expressed to be final and binding) shall, after written notice by either party to the Agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.

- 37.2 The appointing authority shall either himself act as Sole Arbitrator or nominate some officer of Guru Gobind Singh Refineries Limited (GGSRL) or that of Hindustan Petroleum Corporation Limited (HPCL) (referred to as Owner) to act as Sole Arbitrator to adjudicate the dispute and difference between the Parties. The Vendor shall not be entitled to raise any objection to the appointment of such officer of the Owner as the Sole Arbitrator on the ground that the said officer is an officer and/or shareholder of the Owner or that he/she has to deal or dealt with the matter to which the LOI/FOI/Purchase Order relates or that in the course of his/her duties as an officer of the Owner, he/she has/had expressed views on all or any of the matters in dispute or difference.
- 37.3 In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates his office for any reasons whatsoever, the Appointing Authority aforesaid, shall nominate another Officer of the Owner to act as Arbitrator.
- 37.4 Such Officer nominated as Sole Arbitrator shall be entitled to proceed with the Arbitration from the stage at which it was left by his predecessor. It is expressly agreed between the parties that no person other than the Appointing Authority or an officer of the Owner nominated by the Appointing Authority, shall act as an Arbitrator.

37.5 The Award of the Sole Arbitrator shall be final and binding on the parties to the Agreement."

2. In view of the disputes that had arisen between the parties, Mr Pankaj Shrivastava General Manager (Logistics) serving with the petitioner, was appointed as the sole arbitrator on 01.12.2011. Mr Shrivastava resigned as an arbitrator on 30.05.2016. Although the petitioner suggested the name of another person to be appointed in place of Mr Shirvastava, the petitioner could not obtain the respondent's concurrence for the same. This has led the petitioner to file the present petition.

3. The learned counsel for the petitioner submits that since the arbitration clause contemplates the appointing authority to be the sole arbitrator or an officer of Guru Gobind Singh Refineries Limited to be appointed as an arbitrator, the said provision may fall foul of Section 12 of the Act as amended by Arbitration and Conciliation (Amendment) Act, 2015. The respondent has no objection if an independent arbitrator is appointed to adjudicate the disputes between the parties as the arbitrator appointed earlier had resigned on 30.05.2016.

4. Accordingly, with the consent of the parties, that Justice Manmohan Sarin (Retd.), former Chief Justice of Jammu & Kashmir High Court (Mobile No.9818000210) is appointed as a Sole Arbitrator to adjudicate the disputes between 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 arbitrator shall consider the claims as well as counter claims of the parties. The arbitration shall be conducted under the aegis of Delhi

International Arbitration Centre (DIAC) and in accordance with its Rules. The arbitration shall be continued from the same stage as left by the earlier arbitrator. The parties shall appear before the Co-ordinator, DIAC on 21.03.2017 at 11:00 AM.

6. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 23, 2017
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