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

+ **ARB.P. 821/2016**

BHARAT HEAVY ELECTRICALS LTD. Petitioner

Through: Mr Ankit Parhar and Mr Ambarish
Pandey, Advocates.

versus

SURANA POWER LTD. Respondent

Through: Mr M. A. Chinnasamy and Mr Senthil
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **13.02.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreements (two-in-number) dated 28.07.2010. Clause 6 of the General Conditions of Contract, which is applicable to both the contracts, provides for arbitration of disputes between the parties and reads as under:-

“6.2. Arbitration

6.2.1. If the Adjudicator does not give its decision within twenty eight days of a referred dispute, or if either the Purchaser or the Contractor notifies the other in accordance with sub-clause GC 6.

1. 2. That it disagrees with the Adjudicator's decision, then either the Purchaser or the Contractor may give written notice to the other party of its intention to refer the dispute to arbitration.

6.2.2. Any dispute submitted by a party to arbitration shall be heard by a sole arbitrator, or by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below:-

6.2.3. The Purchaser and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall

chair the arbitration panel. If the arbitrators named by the parties do not succeed in appointing a third arbitrator within 28 days after the latter of the two arbitrators named by the parties has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the LOA.

6.2.4. If one party fails to appoint its arbitrator within 28 days after the other party has appointed its arbitrator, the party that has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator in dispute and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

6.2.5. If for any reason an arbitrator is unable to perform its functions, a substitute shall be appointed in the same manner as the original arbitrator.

6.2.6. Arbitration proceedings shall be conducted[(i) in accordance with the rules of procedure designated in the LOA (ii) in the place designated in the LOA (iii) in the language in which this contract has been executed.”

2. By a letter dated 20.10.2016, the petitioner invoked the arbitration clause in respect of both the contracts and nominated Justice A. P. Shah (Retired), former Chief Justice of this Court as an Arbitrator. It is stated that the respondent failed to appoint its Arbitrator. The arbitration clause is not in dispute. Accordingly, the Arbitral Tribunal is required to be constituted. The learned counsel for the petitioner requests that a Sole Arbitrator be appointed instead of an arbitral tribunal of three members.

3. Accordingly, this Court appoints Justice A. P. Shah as the Sole Arbitrator to adjudicate the disputes between the parties. The Arbitrator shall fix his fees in consultation with the parties and having regard to Schedule IV of the Act. The parties are at liberty to approach the Arbitrator for holding a preliminary hearing.

4. This order 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 petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 13, 2017
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