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

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Judgment delivered on: 17.10.2017

+ **ARB. P.648 /2017**

GMR RAJAHMUNDY ENERGY LIMITED Petitioner

versus

GAIL (INDIA) LIMIEDRespondent

Advocates who appeared in this case:

For the Petitioner : Mr Chaitanya Salaya, Ms Shelly Bhasin and Mr Rishi Agarwala

For the Respondent : Counsel for the respondent.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

17.10.2017

SANJEEV SACHDEVA, J. (ORAL)

IA Nos.11938-39/2017(both applications for exemption)

Allowed, subject to all just exceptions.

ARB.P. 648/2017

1. The petitioner, by this petition under Section 11 of the Arbitration & Conciliation Act, 1996 seeks appointment of an Arbitrator under Clause 16.2 of the Gas Transmission Agreement dated 14.07.2010 entered into between the parties. Respondent was to make necessary arrangements for the transportations of the

petitioner's gas on the KG basin pipeline.

2. The Dispute Resolution Clause agreed to between the parties reads as under:-

“16.1 Amicable Settlement:

Save in respect of any dispute on matters, which are to be referred to Expert determination or in respect of any dispute on matters which the Parties otherwise agree shall be referred to Expert for determination, any dispute, controversy, difference or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, shall at the “first instance be mutually settled between the Parties with in a period of 30 days after giving notice by one party to me other party.

16.2 Referral for Settlement

i. In the event of failure of a settlement under Clause 16.1 of any such Dispute, the Dispute shall be referred to and finally resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 (Act 1996) in force at the time such arbitration is commenced.

ii. If a Dispute is to be settled by arbitration pursuant to Clause 16.2 i, then an arbitral tribunal (the “Tribunal”) shall be established in accordance with the provisions of this Clause 16.2 ii. The number of arbitrators shall be 3 (three). Each Party shall nominate an arbitrator within 30(thirty) Days of the date of a request for arbitration, and the two nominated-arbitrators shall within 30 (thirty) Days of the date of the nomination of the second arbitrator jointly nominate a third arbitrator to act as Chairman of the Tribunal.

16.3 Conduct of Arbitration

i. The venue of arbitration shall be New Delhi, India.

ii. The language to be used in the arbitral proceedings shall be English.”

3. As per the petitioner, certain disputes arose with regard to the performance of the Contract leading to the petitioner invoking Arbitration.

4. The petitioner invoked arbitration by notice dated 21.03.2017 and called upon the respondent to nominate their nominee Arbitrator. By letter dated 20.04.2017, the petitioner nominated their Arbitrator.

5. Learned counsel for the respondent has submitted that keeping in view the quantum of claim, it may be expedient to have a Sole Arbitrator in place of the agreed upon three Member Arbitral Tribunal.

6. Learned counsel for the parties under instructions submit that a Sole Independent Arbitrator be appointed to adjudicate the disputes between the parties.

7. In view of the above, with the consent of parties, Mr Justice Mukul Mudgal, former Chief Justice of Punjab & Haryana High Court, is appointed as the Sole Arbitrator to adjudicate the disputes

between the parties.

8. This is 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.

9. The Arbitrator shall adjudicate the claims of the petitioner and the counter claims, if any of the respondents.

10. The Arbitrator shall fix his fee in consultation of the learned counsel for the parties.

11. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

12. The petition is accordingly disposed of.

13. Order *Dasti* under signatures of the Court Master.

OCTOBER 17, 2017/१०'

SANJEEV SACHDEVA, J