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

+ **ARB.P. 179/2018**

GAIL (INDIA) LTD.

..... Petitioner

Through: Mr Varun K. Chopra and Mr Gurtej
Pal Singh, Advocates.

versus

M/S BHILOSA INDUSTRIES PVT LTD.

..... Respondent

Through: Mr Christopher D'souza, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **02.05.2018**

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 for constitution of the Arbitral Tribunal for adjudication of the disputes that have arisen between the parties in respect of the 'Gas Transmission Agreement' dated 15.04.2013 (hereafter 'the Agreement'). The Agreement contains an arbitration clause, which 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 the 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.”

2. The learned counsel appearing for the respondent does not dispute the existence of the arbitration agreement (clause). He, however, submits that necessary procedure for attempting an amicable settlement of disputes has not been complied with. This is disputed by the learned counsel appearing for the petitioner, who has drawn the attention of this Court to a letter dated 08.08.2016 and the minutes of the meetings held on 07.03.2017, 10.03.2017, 20.03.2017 and 24.03.2017. The said letter addressed by the petitioner clearly indicates that the petitioner was ready and willing to consider the proposal of amicable settlement regarding respondent’s outstanding obligation. There is no dispute that thereafter meetings were held to

“address the pending issues amicably” and the same were duly attended by the representatives of both the parties. In the circumstances, this Court is of the view that the condition for attempting an amicable resolution of the disputes has been duly complied with.

3. The petitioner had invoked the arbitration clause by a letter dated 22.11.2017 and has nominated Justice K. Ramamoorthy (Retired) as an arbitrator. In the circumstances, the respondent was required to nominate an arbitrator, which the respondent has failed to do.

4. In view of the above, Ms Rekha Sharma, Retd. Judge, Delhi High Court (Mobile No. 9871300025) is appointed as an Arbitrator. 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. Both the arbitrators [Justice K. Ramamoorthy (Retired) and Justice Rekha Sharma (Retired)] shall concur on the appointment of a third Arbitrator within a period of 30 days from today.

5. It is clarified that if the said arbitrators are unable to concur on appointment of a third Arbitrator, either of the parties are at liberty to approach this Court.

6. The petition is disposed of.

7. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

MAY 02, 2018/RK