

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 07.05.2018

+ **ARB.P. 162/2018**

INDIAN OIL CORPORATION LIMITED

..... Petitioner

Versus

**ESSAR OIL LIMITED THROUGH ITS
DIRECTOR**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dhruv Dewan and Ms Reena
Choudhary.

For the Respondent : Mr C.S. Vaidyanathan, Ms Anuradha
Mukherjee, Ms Amita Katragadda,
Ms Jyoti Dashdar, Mr Vanshika Mohta.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner (hereafter 'IOCL') has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying for appointment of the respondent's nominee arbitrator as the respondent (hereafter 'EOL') had failed to do so. IOCL seeks constitution of an arbitral tribunal to adjudicate the disputes that have arisen between IOCL and EOL in terms of the 'Gas Sale Agreement' dated 15.01.2009 (hereafter 'the GSA') for the period during which the rights and obligations under

the GSA were assigned to and assumed by EOL. EOL does not dispute the existence of an arbitration agreement between the parties; however, it has sought to resist the present petition, essentially, on three grounds. First, it claims that the disputes sought to be referred are already the subject matter of another arbitration initiated by IOCL earlier.

2. Second, EOL contends that the claims raised by IOCL against EOL form the subject matter of a claim lodged by IOCL against Essar Steel India Limited (hereafter 'ESIL') against which proceedings under the Insolvency and Bankruptcy Code, 2016 (hereafter 'IBC') have been commenced. It is stated that the National Company Law Tribunal (NCLT) has passed an order under Section 14 of the IBC restraining institution of suits or continuation of pending suits or proceedings against ESIL, therefore, the present proceedings are also not maintainable. EOL claims that since IOCL has joined the Insolvency Resolution Process, it cannot maintain the present petition against EOL in respect of the claims lodged against ESIL.

3. Third, it claims that ESIL is a necessary party to the arbitral proceedings and without making ESIL a party – which is currently not possible by virtue of the order passed by the NCLT – the arbitral proceedings cannot be continued against EOL.

Factual context in which the controversy arises:

4. IOCL is a Government company and is, *inter alia*, engaged in

the business of sale of petroleum products and Natural Gas (Gas).

5. On 15.01.2009, IOCL entered into the GSA with ESIL (then known as Essar Steel Ltd.). The GSA was valid till 30.04.2028. In terms of the GSA, IOCL agreed to supply Gas to ESIL and ESIL agreed to off take the Adjusted Annual Contract Quantity (hereafter 'AACQ') of Gas supplied by IOCL for each Contract Year (Calendar Year from January to December). ESIL agreed to off take AACQ on 'Take or Pay Obligation' (hereafter 'ToP') basis.

6. ESIL desired to assign its rights and obligations under the GSA to its affiliate company (EOL) which was agreed to by IOCL and IOCL, ESIL and EOL entered into an Assignment Agreement (First Assignment Agreement) on 14.11.2013. In terms of the First Assignment Agreement, ESIL assigned its rights to receive the full quantum of Gas till 31.08.2014 to EOL. EOL agreed to accept the assignment of all of ESIL's obligations, responsibilities, duties, right, title and interest under the GSA from the effective date (that is, from 14.11.2013).

7. Thereafter, the parties, namely, IOCL, ESIL and EOL entered into another Assignment Agreement (Second Assignment Agreement) on 25.09.2014 which was in similar terms as the First Assignment Agreement and was valid till 30.09.2015.

8. Certain disputes arose, *inter alia*, between IOCL and EOL. EOL claimed that IOCL was wrongly claiming a sum of ₹6,61,38,53,694/- towards ToP obligations for the year 2014 by way

of the Annual Statement of Settlement dated 27.02.2015. IOCL had also encashed the bank guarantee furnished by EOL, which EOL claimed was wrongful. In view of the disputes between the said parties, EOL issued a notice dated 23.02.2017 under Article 15.1 of the GSA calling upon IOCL to enter into negotiations with view to settle the above disputes.

9. IOCL responded by a letter dated 09.03.2017. However, the same was addressed to ESIL (then known as Essar Steel Ltd.); but, the copy of the same was marked to EOL.

10. Thereafter, IOCL sent a letter dated 27.04.2017 addressed to ESIL claiming that ToP obligation to ESIL for the Contract Year 2014 was ₹6,61,38,53,694/-. Similarly, ToP obligations for the Contract Year 2016 was ₹7,91,89,04,245/-. IOCL stated that it had recovered a sum of ₹192.40 crores out of EOL/ESIL's outstanding for ToP obligations for the year 2014 and by encashment of the bank guarantees and after adjusting the amount recovered, the total ToP obligations of ESIL/EOL for the year 2014 and 2016 (with applicable interest) amounted to ₹13,85,46,37,943/-. IOCL further called upon ESIL to discharge the liabilities under the GSA.

11. The afore-mentioned notice was followed by a notice dated 08.05.2017, issued under Article 15(1) of the GSA, addressed to both ESIL as well as EOL. IOCL also sent another letter dated 20.06.2017 to ESIL and EOL calling ESIL to forthwith take steps to cure its numerous breaches and comply with the obligations under

the GSA.

12. EOL responded to the notice dated 08.05.2017 and the letter dated 20.06.2017 by a letter dated 13.07.2017, *inter alia*, stating that the disputes between IOCL and EOL related to the encashment of the bank guarantee for a sum of ₹186 crores and IOCL's wrongful claims for ToP obligations for the Year 2014 amounting to ₹574.10 crores and the said claims should not be confused or linked with the disputes that IOCL had with ESIL.

13. Thereafter, IOCL issued a notice dated 11.07.2017 which was addressed to both, ESIL and EOL calling upon ESIL to select a sole arbitrator from a panel of three distinguished persons as indicated therein.

14. In response to the aforesaid notice, EOL sent a notice dated 27.07.2017 stating that while the notice dated 11.07.2017 was addressed both to ESIL and EOL, the contents did not pertain to and were not relevant to EOL. EOL further requested that a meeting be convened for amicably resolving the disputes between IOCL and EOL referred to in the EOL's notice of dispute dated 23.02.2017.

15. On 19.08.2017, IOCL sent a notice to EOL clarifying that the disputes between EOL and IOCL were not limited to those that were mentioned in EOL's notice of dispute dated 23.02.2017 and the same also included the disputes notified by IOCL in its demand notice dated 27.04.2017 and also referred to in the notice of dispute dated 08.05.2017. EOL was also called upon to select a sole arbitrator

from the panel of three members as suggested by IOCL.

16. EOL responded to the above letter on 21.09.2017, *inter alia*, claiming that IOCL had not initiated the arbitration against EOL properly. It further reiterated that IOCL had no valid claim against ToP obligations under the GSA.

17. IOCL responded to EOL's letter dated 21.09.2017 by a letter dated 09.10.2017 reiterating that the notices issued earlier were addressed both to ESIL and EOL on the basis that their liability was joint and several. IOCL further stated that they had clarified the same by a letter dated 19.08.2017 and, therefore, at least from that date, EOL had further notice to the disputes. IOCL also communicated that it was agreeable to continue to engage in a transparent and amicable dialogue to resolve the disputes between the parties without prejudice to its rights and contentions.

18. EOL sent another letter dated 13.10.2017, *inter alia*, referring to certain meetings that were held for settlement of disputes and further stating that EOL was ready to meet once again to amicably resolve their issues.

19. After some exchange of communications, IOCL issued a letter dated 29.12.2017 notifying EOL that since parties had failed to appoint a sole arbitrator as per the procedure prescribed under Article 15.6(1) of the GSA, IOCL had appointed Justice R.V. Raveendran (Retired) as its nominee arbitrator after seeking the disclosure under Section 12 of the Act read with the Sixth Schedule

to the Act. IOCL further called upon EOL to nominate its nominee arbitrator within a period of 30 days from receipt of the said letter. EOL responded to the aforesaid notice by an email dated 27.01.2018 stating that they were looking into the said letter and they would respond in detail. Subsequently, thereafter, on 09.02.2018, EOL sent another letter stating that they would be responding to IOCL's letter dated 29.12.2017 by 26.02.2018. Thereafter, on 26.02.2018, EOL sent a letter, *inter alia*, claiming that IOCL's letter dated 29.12.2017 invoking the arbitration is untenable.

20. In view of the above, IOCL has filed the present petition.

Submissions

21. Mr C.S. Vaidyanathan, learned counsel appearing for EOL contended that ESIL was a necessary and proper party for adjudication of the disputes raised by IOCL. And, as IOCL cannot proceed against ESIL, at the present stage, in view of the moratorium against initiation of any proceedings against ESIL by virtue of the orders passed by NCLT, the present petition ought to be rejected. Second, he submitted that IOCL had already lodged its claim in the proceedings under the IBC and, therefore, it was not permissible for IOCL to simultaneously pursue the said claims against EOL.

22. Third, he referred to the notice dated 11.07.2017 issued by IOCL and contended that although the said notice issued under Article 15.6 of the GSA was addressed to ESIL as well as EOL, the examination of the contents clearly indicated that IOCL had

demanded the disputed amounts from ESIL and not to EOL. He further submitted that the said notice was preceded by notice of demand dated 27.07.2017 and a notice of dispute dated 08.05.2017 and the contents of the said notices also clearly indicated that the same were addressed for raising demands against ESIL only. He submitted that IOCL was now seeking to refer the disputes against EOL to arbitration pursuant to the said notices but no demand had been raised against EOL. He submitted that in the circumstances, IOCL was required to proceed only against ESIL which it had done.

Reasons and Conclusion:

23. At the outset, it is relevant to state that there is no dispute as to the existence of an arbitration agreement between IOCL and EOL. Concededly, the arbitration clause as included in the GSA, stood incorporated by reference in the First Assignment Agreement and the Second Assignment Agreement (hereafter ‘the assignment agreements’).

24. Sub Articles 15.1 and 15.6 of the GSA, are relevant and are set out below:-

“15.1 Amicable Settlement

The Parties shall use their respective reasonable endeavors to settle any Dispute amicably through negotiations. If a Dispute is not resolved within sixty (60) Days after written notice of a Dispute by one Party to the other Party then the provisions of Article 15.6 shall apply unless the subject matter of such Dispute is required to be referred to a Sole Expert under Article

15.2 in which case the provisions of Article 15.2 shall apply.

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15.6 Arbitration

Any dispute arising in connection with this Agreement, which is not resolved by the Parties pursuant to Article 15.1 within sixty (60) Days of the notice of the Dispute, other than those referred to the Sole Expert under Article 15.2, shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996. The procedure for appointment of arbitrators shall be as follows:

- (i) Either Party may submit the Dispute to a single arbitrator (the "Sole Arbitrator") within fifteen (15) Days after expiry of the sixty (60) Days period prescribed in Article 15.1. The Seller shall provide a panel of three (3) distinguished persons within thirty (30) days invocation of the Arbitration Clause and the Buyer shall thereafter select the Sole Arbitrator from the panel provided by the Seller within thirty (30) Days of the Seller providing the list.
- (ii) In the event of any failure to select a Sole Arbitrator under Article 15.6 (a)(i), the Dispute shall be referred to a tribunal comprising three (3) arbitrators. Each Party to the arbitration shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the "Arbitral Tribunal").
- (iii) The decision(s) of the Sole Arbitrator or the Arbitral Tribunal, as the case may be, supported

by reasons for such decision, shall be final and binding on the Parties.

(iv) The venue of arbitration shall be New Delhi.

This Article 15.6 shall survive the termination or expiry of this Agreement.

25. EOL had also issued notice dated 23.02.2017 under Article 15.1 of the GSA. It is relevant to note that in terms of the said notice dated 23.02.2017, EOL had disputed the Annual Statement of Settlement of IOCL dated 27.02.2015 and had asserted that IOCL had wrongfully claimed a payment of ₹6,61,38,53,694/- towards ToP obligations for the year 2014. In addition, the EOL had also raised a dispute with regard to the recovery of ₹186 crores by IOCL by invoking the bank guarantee furnished by EOL.

26. By virtue of Section 11(6A) of the Act, the scope of the present petition is limited to examining the existence of an arbitration agreement, which in this case admittedly exists.

27. The contention that ESIL is a necessary party to the disputes and, therefore, it is not permissible to IOCL to seek proceedings against EOL is unmerited. In terms of the assignment agreements entered into between the parties, EOL had accepted the assignment of all of ESIL's obligations, responsibilities, duties, right, title and interest under the GSA from the effective dates. EOL had further unconditionally agreed to abide with all the obligations of ESIL

under the GSA. The First Assignment Agreement was valid from 14.11.2013 to 31.08.2014. Similarly, the Second Assignment Agreement – which was similarly worded as the First Assignment Agreement – was valid from 25.09.2014 to 30.09.2015. During the aforesaid periods, EOL assumed full liabilities of ESIL. However, the assignment agreements also included a covenant, which reads as under:-

“7. The Seller [IOCL] in executing its consent to this Assignment, however it does not release Assignor [ESIL] from any claims or remedies it may have against Assignor under the said Agreement [GSA].”

28. In terms of the aforesaid clause, IOCL did not release ESIL from any claims or remedies that IOCL may made under the GSA. It is in the aforesaid context that IOCL claims that ESIL is jointly and severally liable for the claims that arise in respect of the ToP obligations during the term of the assignment agreements (that is, from 14.11.2013 to 31.08.2014 and from 25.09.2014 to 30.09.2015).

29. IOCL, accordingly, claims that it is entitled to proceed against EOL independent of its claims against ESIL, in respect of the ToP liability for the period 14.11.2013 to 31.08.2014 and from 25.09.2014 to 30.09.2015. Although, the Court finds no infirmity with the said view; however, it is not necessary for this Court to finally adjudicate the said issue as the scope of the present petition is limited to considering whether an arbitral tribunal is required to be constituted.

30. IOCL claims that it is entitled to proceed against EOL independent of ESIL and although EOL disputes the same, that cannot be a ground for not appointing an arbitrator as in terms of Article 15.6 of the GSA, any dispute arising in connection with the GSA which is not resolved by the parties within a period of 60 days of the notice of disputes is required to be settled by arbitration in accordance with the Act.

31. In its reply, EOL has also objected to the appointment of an arbitrator on the ground that IOCL is seeking to initiate a parallel arbitration proceedings on the same subject matter. It is claimed that the application has been filed for in furtherance of *an arbitration over the dispute, the subject matter of which is directly and substantially in issue in a previously instituted arbitration between the same parties i.e., the petitioner and the respondent.*

32. EOL had claimed that the previously instituted arbitration proceeding had commenced pursuant to a notice dated 11.07.2017, whereby IOCL had called upon ESIL to discharge its ToP obligations for the Contract Years 2014 and 2016. However, a close examination of the letters written by ESIL indicates that EOL has been taking inconsistent stands as is apparent from the facts as noticed hereafter.

33. IOCL had issued a notice dated 08.05.2017 which was addressed both to EOL and ESIL, *inter alia*, claiming that ESIL had failed to discharge its ToP obligations for the Contract Years 2014

and 2016 and had breached the terms of the GSA read with the Side Letter dated 04.05.2016 in respect of the Contract Year 2015. Thereafter, IOCL had also sent a letter dated 20.06.2017 addressed to ESIL and EOL once again calling ESIL to forthwith take steps to cure its numerous breaches and comply with the obligations under the GSA and the side letter dated 04.05.2016. EOL had responded to the aforesaid letters by a letter dated 13.07.2017, *inter alia*, stating as under:-

“1. We request IOCL to kindly refrain from confusing and/or linking the issues of Essar Oil Limited’s (‘EOL’) dispute with IOCL, and the disputes IOCL has with Essar Steel India Limited (‘ESIL’). EOL’s dispute with IOCL pertains to the unlawful encashment of EOL’s Bank Guarantee worth Rs. 186 Crores by IOCL, and IOCL’s wrongful claims for take or pay obligations for the year 2014 amounting to Rs 574.10 Crore. The issues regarding termination of the GSA are to be addressed and discussed between IOCL and ESIL, and EOL has no role and/or responsibility for it.”

34. Thus, it was EOL’s stand that it had no role or responsibility in respect of disputes regarding termination of the GSA and the disputes between IOCL and EOL were limited to the encashment of EOL’s bank guarantee worth ₹186 crores and IOCL’s wrongful claim for ToP obligations for the year 2015 amounting to ₹574.10 crores.

35. EOL had sent a letter dated 27.07.2017 in response to IOCL

notice dated 11.07.2017, *inter alia*, stating as under:-

“2. Under the captioned letter, IOCL has invoked arbitration against ESIL and has called upon ESIL to select a sole arbitrator, for various claims made by IOCL against ESIL. We note that while the Letter has also been addressed to Essar Oil Limited, along with ESIL, the contents thereof do not pertain to and are not relevant to EOL - as all claims made in the letter have been made by IOCL against ESIL only. In the circumstances, the Letter merits no response from EOL.”

36. It was, thus, EOL's stand that IOCL had invoked arbitration only against ESIL by the notice dated 11.07.2017 contrary to the aforesaid stand EOL now claims that the disputes sought to be raised by IOCL are subject matter of disputes of a “*previously instituted arbitration between the same parties i.e., EOL and IOCL*”.

37. In response to the aforesaid letter, IOCL had clarified by letter dated 19.08.2017 addressed to EOL that the disputes between EOL and IOCL were not restricted to those mentioned in EOL's notice of dispute dated 23.02.2017 and the said disputes also included the disputes notified to EOL by IOCL's demand notice dated 27.04.2017 and notice of dispute dated 08.05.2017. To further avoid any confusion, IOCL had clarified the disputes that had arisen between EOL and IOCL. The relevant extract of the said letter is set out below:-

“4. We wish to clarify that the disputes between EOL and IOCL are not restricted to those mentioned in

EOL's Notice of Dispute dated 23 February 2017. The disputes/differences between the parties also include the disputes notified to you *vide* IOCL's Demand Notice dated 27 April 2017 and those referenced in Notice of Dispute dated 08 May 2017.

5. To avoid any further confusion on this account, we enumerate below the disputes, *inter alia*, arising between EOL and IOCL under the GSA and the Assignment Agreements dated 14 November 2013 and 25 September 2014 ("the Disputes"):

- (i) EOL's TOP liability under the Assignment Agreements dated 14 November 2013;
- (ii) EOL's TOP liability under the Assignment Agreement dated 25 September 2014; and
- (iii) Purported illegality in the encashment of EOL's Bank guarantees of Rs. 186 crores by IOCL as alleged in your Notice of Dispute dated 23 February 2017

With respect to the matters under sr. no. (i) and (ii), where ESIL's liability is co-extensive with EOL and in respect of certain other matters such as termination of the GSA, we are taking necessary legal measures against ESIL.

6. Having said that, the arbitration mechanism under the GSA has already been set in motion between the parties *vide* our letter dated 11 July 2017. We would, therefore, call upon you to select the sole arbitrator out of the panel of distinguished persons provided to you earlier *vide* the said letter dated 11 July 2017. For ease of reference, we are again listing out the names of these arbitrators:

- a. Retd. Justice R V Raveendran
- b. Retd. Justice Anil R Dave

c. Retd. Justice K S Panicker

7. Should you fail to provide your selection, or not agree to the appointment of the sole arbitrator from the above panel, then the arbitral tribunal will be constituted as per the mandate of Article 15.6.(ii) of the GSA for the resolution of disputes outlined in para 4 above.”

38. In view of the above letter, there was no ambiguity as to the disputes that had arisen between IOCL and EOL, which IOCL desired to be resolved in terms of Article 15 of the GSA.

39. It is also relevant to state that although IOCL had called upon EOL to select one of the named persons as a sole arbitrator, it had also indicated in its letter dated 19.08.2017 that it was willing to hold another meeting to discuss the amicable settlement of disputes.

40. Although, IOCL had clearly spelt out that the disputes between IOCL and EOL, which according to IOCL were required to be resolved under Article 15 of the GSA, EOL had sought to resist the same on one ground or the other. EOL now sent a letter dated 21.09.2017, *inter alia*, denying that IOCL had properly initiated the arbitration against EOL in terms of Clause 15.6 of the GSA. It claimed that the notice dated 11.07.2017 had only called upon ESIL to rectify the breaches under the GSA and IOCL had initiated arbitration only against ESIL. The relevant extract of the letter dated 21.09.2017 is as under:-

“2. At the outset, EOL denies that IOCL has properly initiated arbitration against EOL, in terms of

Clause 15.6 of the GSA. The contents and addressee of IOCL's letter dated 11 July 2017 clearly indicate that it had raised its claims, and initiated arbitration, in relation to the Take or Pay Obligation under the GSA, including the years 2014 and 2015, against Essar Steel India Limited ('ESIL'). In the letter of 11 July 2017, IOCL has clearly stated that, " ... *IOCL had intimated ESIL of its breaches under the GSA. ..* " Further, IOCL initiated arbitration only against ESIL, and called upon "... *ESIL to select the sole arbitrator ...* ""

41. In response to EOL's stand, IOCL sent another letter dated 09.10.2017, *inter alia*, stating that from 19.08.2017, if not prior thereto, EOL had full notice of the disputes that exists between the parties. IOCL had further reiterated that it was agreeable to engage in a transparent and amicable dialogue with EOL to resolve the disputes between the parties for a period of 60 days from IOCL's letter dated 19.08.2017.

42. EOL now responded by a letter dated 13.10.2017, *inter alia*, stating that EOL had "*received the Letter prescribing the deadline of 60 days for amicable settlement, which deadline ends on 19 October 2017, only on 9 October 2017.*" Nonetheless, without prejudice to its rights, EOL indicated that it was ready to meet the representatives by IOCL to resolve the issue amicably. Thereafter, the parties exchanged communications but it is apparent that they have been unable to resolve their disputes amicably.

43. From the facts as noticed above, it is clear that IOCL had in no certain terms spelt out the disputes that had arisen between IOCL

and EOL, it had also communicated its willingness to the discussions for an amicable resolution of those disputes which have remained unresolved. In the circumstances, there is little doubt that IOCL was well within its right to demand that the disputes be referred to arbitration, the period of 60 days for an amicable resolution of the disputes as set out in Clause 15.1 of the GSA had clearly elapsed.

44. As noticed above, on one hand EOL has resisted IOCL's effort to refer the disputes to arbitration by disputing the notices sent by IOCL on the ground that the contents of the said notices dated 08.05.2017 and 11.07.2017 did not concern EOL and on the other hand, EOL now seeks to assert that the disputes are already subject matter of arbitration commenced by those notices.

45. Notwithstanding the above somewhat contradictory stands of EOL, it is clear that in either view, IOCL would have the right to insist that the disputes between IOCL and EOL be referred to arbitration, as there is no dispute with regard to existence of arbitration agreement between the parties. If the EOL's stand that the arbitration proceedings have commenced by the notice dated 11.07.2017 is accepted then an arbitral tribunal is required to be constituted for adjudication of the said disputes notwithstanding that ESIL cannot be joined as a party by virtue of the moratorium under Section 14 of the IBC. This is so because IOCL claims that it is entitled to pursue its remedies against EOL in respect of the disputes as clearly spelt out in the letter dated 19.08.2017. The assignment agreements are also unambiguous and in terms of those agreements,

EOL had accepted the assignment of all of ESIL's *obligations, responsibilities and duties* under the GSA. EOL had further unconditionally agreed to abide by all obligations of ESIL to IOCL under the GSA.

46. If the letter dated 19.08.2017 is considered as a notice commencing a fresh arbitration against EOL, as is sought to be suggested, EOL cannot possibly object to the same as it was issued to clarify that the disputes existed between IOCL and EOL which were required to be referred to arbitration.

47. Notwithstanding the earlier notices, IOCL had also called upon EOL to select one of the three distinguished persons named in its letter as the sole arbitrator which EOL had failed to do. IOCL had then, by a letter dated 29.12.2017, called upon EOL to appoint its nominee arbitrator which EOL failed and neglected to do but on the contrary, had sought to dispute the IOCL's right to have the disputes resolved by arbitration.

48. This Court is also of the view that the conduct of EOL has not been fair and forthright and it has spared no effort to obstruct and delay the resolution of the disputes raised by IOCL. The objections raised by EOL can most charitably be described as inconsiderable. Thus, this Court is of the view that the petition is to be allowed with costs in favour of IOCL.

49. In view of the above, the petition is allowed. Justice D.K. Jain, former Judge of the Supreme Court of India (Mobile No.

9999922288) 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 R.V. Raveendran (Retired) and Justice D.K. Jain (Retired)] shall select and appoint a third arbitrator to act as a presiding arbitrator.

50. EOL is further directed to pay costs quantified at ₹50,000/- to IOCL within a period of two weeks from today.

51. The parties are at liberty to approach two arbitrators for further proceedings.

52. The petition is disposed of in view of the above terms.

MAY 07, 2018
RK

VIBHU BAKHRU, J