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

+ **ARB.P. 250/2018**

TRIVENI ENGINEERING AND INDUSTRIES
LTD

..... Petitioner

Through Mr Sourav Roy, Advocate.

versus

GAIL (INDIA) LTD

..... Respondent

Through Mr Sandeep Maharatra, advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.05.2018

1. The petitioner has filed the present petition under Section 11 (6) 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 connection with the Agreement dated 22.05.2012 (hereafter 'the Agreement'). The Agreement includes an arbitration clause which is set out below:-

**“SECTION-IX APPLICABLE LAWS AND
SETTLEMENT OF DISPUTES**

107.1 Unless otherwise specified, the matters where decision of the Engineer-in-Charge is deemed to be final and binding as provided in the Agreement and the issues/disputes which cannot be mutually resolved within a reasonable time, all disputes shall be referred to arbitration by Sole Arbitrator.

The Employer [GAIL (India) Ltd.] shall suggest a

panel of three independent and distinguished persons to the bidder/contractor/supplier/buyer (as the case may be) to select any one among them to act as the Sole Arbitrator.

In the event of failure of the other parties to select the Sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of the sole arbitrator by the other party shall stand forfeited and the EMPLOYER (GAIL) shall have discretion to proceed with the appointment of the Sole Arbitrator. The decision of Employer on the appointment of the sole arbitrator shall be final and binding on the parties.

The award of sole arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the sole arbitrator, the cost of arbitration proceedings shall be shared equally by the parties. The Arbitration proceedings shall be in English language and venue shall be New Delhi, India.

Subject to the above, the provisions of (Indian) Arbitration & Conciliation ACT 1996 and the Rules framed there under shall be applicable. All matter relating to this contract are subject to the exclusive jurisdiction of the court situated in the state of Delhi.

Bidders/suppliers/contractors may please note that the Arbitration & Conciliation Act 1996 was enacted by the Indian Parliament and is based on United Nations Commission on International Trade Law (UNCITRAL model law), which were prepared after extensive consultation with Arbitral Institutions and centers of International

Commercial Arbitration. The United Nations General Assembly vide resolution 31/98 adopted, the UNCITRAL Arbitration rules on 15 December 1976.”

2. In view of the disputes that have arisen between the parties, the petitioner invoked the arbitration clause by a letter dated 30.01.2018; however, the petitioner did not receive any written response to the said letter.

3. The learned counsel appearing for the respondent does not dispute the existence of an arbitration clause or that the petitioner had duly invoked the same. He, however, submits that it would be apposite if the parties make an effort to resolve the disputes amicably.

4. It is seen from the correspondence placed on record that the parties have held discussions to resolve the disputes amicably but the same have remained unsolved. It is, thus, apparent that the parties have exhausted their efforts to amicably resolve their disputes. In addition, the learned counsel for the petitioner further claims that the entire object of the respondent is to delay the payment of admitted amounts that are due to the petitioner. In view of the above, this Court does not consider it apposite to defer the matter to enable the parties to resolve the disputes amicably.

5. Since the arbitration agreement is not disputed, it is necessary that an arbitral tribunal be constituted to adjudicate the disputes between the parties. Accordingly, Justice B.D. Ahmed, (Mobile No. 7042205786), former Chief Justice of Jammu and Kashmir High Court is appointed as the Sole Arbitrator to adjudicate the disputes falling within the scope of the arbitration clause as set out above. 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. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.

6. The parties are at liberty to approach the arbitrator for further proceedings.

7. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MAY 16, 2018

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