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

+ **ARB.P. 312/2018**

CONSOLIDATED CONSTRUCTION
CONSORTIUM LTD

..... Petitioner

Through Mr L.B. Rai, Advocate.

versus

OIL & NATURAL GAS
CORPORATION LIMITED

..... Respondent

Through Mr Abhishek Puri, Mr Surbhi Gupta,
Mr V. Siddharth, Mr Yasharth Misra, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.04.2018

IA No. 5537/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. 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 the contract relating to construction of 'Rajiv Gandhi Urja Bhavan, ONGC Energy Centre and Corporate Office of ONGC at Vasant Kunj, New Delhi'.
4. The agreement between the parties includes an arbitration clause. The relevant extract of the arbitration clause is set out below:-

“1.3.2 **Arbitration (Applicable in case of supply orders/contracts with firms, other than Public Sector Enterprises)**

Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction meaning, operation effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same shall be referred to Arbitration as provided hereunder:

1. A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. The notice invoking arbitration shall specify all the points of dispute with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter. If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee for the purpose of constitution of the arbitral tribunal.
2. The number of the arbitrators and the appointing authority will be as under:-

Claim amount (excluding claim for interest and counter claim, if any)	Number of arbitrator	Appointing authority
Upto Rs. 5 Crore	Sole Arbitrator	COMPANY
Above Rs. 5 Crore	3 Arbitrators	One arbitrator by each party and the 3 rd arbitrator who shall be the presiding arbitrator

		by the two arbitrators.
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5. Since the claims raised by the petitioner are in excess of ₹5 crores, a tribunal of three arbitrators is required to be appointed.

6. The petitioner by a letter dated 25.12.2017 had invoked the arbitration clause and had also nominated Sh Prem Kumar, former District Judge as an arbitrator.

7. The learned counsel appearing for the respondent submits that the respondent has not nominated an arbitrator, as required in terms of the arbitration clause, as the parties were in negotiation for an amicable resolution of the disputes. He further states that the respondent intended to nominate Justice A.P. Shah, former Chief Justice of this Court as an arbitrator; however, the same could not be communicated to the petitioner in view of the negotiations being held between the parties.

8. In view of the above submissions and considering that there is no dispute as to the existence of the arbitration clause, this Court appoints Justice A.P. Shah (Retired), former Chief Justice of this Court 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 – Sh Prem Kumar and Justice A.P. Shah (Retired) – shall concur on appointment for a third arbitrator in terms of the arbitration clause.

9. The arbitrators shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.

10. The parties are at liberty to approach the arbitrators for further

proceedings.

11. The petition is disposed of.

12. Order *dasti*.

APRIL 24, 2018

pkv

VIBHU BAKHRU, J