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

+ **ARB.P. 451/2018**

ION EXCHANGE (INDIA) LTD.

..... Petitioner

Through: Mr Aaditya Vijay Kumar and Ms
Liza M. Baruah, Advocates.

versus

CARGILL INDIA PVT.LTD

..... Respondent

Through: Mr Ahmed Said, Advocate for Mr
Shadan Farasat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.06.2018

IA No. 8037/2018

1. Allowed, subject to all just exceptions.

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2. 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 agreement dated 17.04.2014 (hereafter 'the Agreement'). The Agreement includes an arbitration clause, which is set out below:-

“24. DISPUTE RESOLUTION

- a. Any controversy or claim arising out of or relating to either party's performance under this Agreement, or the interpretation, validity or enforceability of this Agreement, will, upon the written request of Either party, be referred to

designated senior management representatives of Supplier and Cargill for resolution. Such representatives promptly meet and, in good faith, attempt to resolve the controversies, claims or issues referred to them.

- b. If such representatives do not resolve a matter referred to them within thirty (30) calendar days after reference to that matter (the "Referral Period") matter will be resolved by arbitration. Such arbitration will be conducted in English in New Delhi by a sole independent arbitrator appointed mutually by the parties in accordance with the [Indian] Arbitration and Conciliation Act, 1996, as amended from time to time. Judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrators will have no authority to award punitive damages. Unless otherwise ordered by the arbitrator(s), the parties will bear their respective costs incurred in connection with any arbitration hereunder.
- c. Notwithstanding any other provision of this Agreement, each party is entitled to access the courts of competent jurisdiction to: (i) toll any statute of limitation, or (ii) seek appropriate injunctive relief or other equitable remedy if, in such party's sole discretion, such action is deemed necessary to avoid irreparable damage or preserve the status quo."

3. In view of the disputes that had arisen between the parties, the petitioner had invoked the arbitration clause by a notice dated 09.02.2018. The respondent responded to the aforesaid notice by a letter dated 27.02.2018 suggesting that the parties approached the Delhi International Arbitration Centre (DIAC) for adjudication of the disputes.

4. In the aforesaid circumstances, there is no dispute as to the existence of an arbitration agreement. The learned counsel for the petitioner states that the petitioner is willing that the disputes be resolved by the arbitration under the aegis of DIAC.

5. In view of the above, it is directed that an arbitrator be appointed by the DIAC. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules. The parties are directed to appear before the Co-ordinator, DIAC on 07.06.2018 at 11:00 AM.

6. The petition is disposed of.

VIBHU BAKHRU, J

JUNE 01, 2018

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