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

Date of Decision: 03.10.2018

+ ARB.P. 608/2018

M/S NCCL-PREMCO (IV)

..... Petitioner

Through: Mr. S. K. Chandwani with Mr. Sameer
Chandwani, Advocates.

versus

NATIONAL THERMAL POWER
CORPORATION LIMITED & ORS.

..... Respondents

Through: Mr. Puneet Taneja and Ms. Shaheen,
Advocates for R-1/NTPC.
Mr. Udit Seth, Advocate for R-32 &
3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996. Notice in this petition was issued on 23.08.2018. On that date Mr. Puneet Taneja, Advocate entered appearance on behalf of respondent No.1/NTPC Ltd.

2. On return of notice, i.e. today, Mr. Udit Seth enters appearance on behalf of respondent No.2/RITES.

2.1 The only contention of Mr. Seth is that since the Arbitrator has already been appointed by respondent No.2/RITES under the arbitration agreement obtaining between the parties, this petition would not lie. According to Mr. Seth, respondent No.2/RITES had appointed the Arbitrator on 09.08.2018.

2.2 This submission of Mr. Seth was premised on the impression that he

carried that the instant petition was filed on 20.08.2018. The record of this Court, however, shows that the captioned petition was filed on 16.07.2018 i.e. prior to respondent No.2/RITES appointing an Arbitrator in the matter.

2.3 Faced with this situation, Mr. Seth says that he cannot argue that given the position in law, as articulated in a judgment of the Supreme Court in *Datar Switchgears Ltd.v TATA Finance Ltd. and Another*, (2000) 8 SCC 151, this Court would be empowered to appoint an Arbitrator and that the subsisting Arbitrator's mandate would stand dissolved.

3. On the other hand, Mr. Taneja, who, appears on behalf of respondent No.1/NTPC Ltd., says that there is no contract obtaining between the petitioner and respondent No.1/NTPC Ltd. It is the learned counsel's submission that the contract has been executed as between the petitioner and respondent No.2/RITES.

4. The record shows that respondent No.2/RITES acted as the agent of respondent No.1/NTPC Ltd with its approval. Resultantly, the work order dated 11.04.2005 as well as the formal agreement dated 02.05.2005 was entered into by respondent no. 2/RITES with the petitioner. It is pertinent to note that both these documents and subsequent correspondences exchanged by respondent No.2/ RITES with the petitioner bear the endorsement that respondent No.2/RITES acted for and on behalf of respondent No.1/NTPC Ltd.

4.1 Importantly, the acceptance by the petitioner of the work order dated 11.04.2005 was based on this representation by respondent No.2/RITES. Mr. Chandwani, who appears on behalf of the petitioner apart from the work order and agreement, also drew my attention to letter dated 19.03.2012 and 26.07.2012 in support of his submission that respondent No.1/NTPC Ltd. a

was a proper and necessary party to the arbitration proceedings.

5. Clearly, what emerges from the record is that respondent No.1/NTPC Ltd. is the principal and that respondent No.2/RITES was acting as its agent.

6. In these circumstances, to my mind, respondent No.1/ NTPC Ltd would be a proper and a necessary party to the arbitration proceedings.

6.1 The principles articulated by the Supreme Court in *Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. & Ors.*, (2013) 1 SCC 641, in my opinion, would apply to the circumstance at hand, whereby even a non-signatory to an agreement can be referred to arbitration.

7. Accordingly, the contention advanced by learned counsel for the respondent No.1/NTPC Ltd that because there is no privity of the contract, it should be deleted from the array of parties, cannot be sustained. This submission is, consequently, rejected.

8. In view of the foregoing, Mr. S. B. Sinha, (+919868219666), former Judge, Supreme Court of India, is appointed as the Sole Arbitrator. The learned Arbitrator will be paid fees as per the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996. Consequently, the mandate of the Mr. S. K. Sharma, who was appointed as the Arbitrator by respondent no. 2/RITES, stands dissolved.

9. The Registry will dispatch a copy of the order to the learned Arbitrator.

10. The petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

OCTOBER 03, 2018

hs/Pallavi