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

\+ ARB.P. 547/2018

COBRA INSTALACIONES Y SERVICES S.A, & M/S SHYAM INDUS POWER SOLUTION PVT. LTD.(JV) ..... Petitioner

Through: Mr.Pankaj Kumar Singh, Adv.

versus

THE MANAGING DIRECTOR HARYANA VIDYUT PRASARAN NIGAM LIMITED ..... Respondent

Through: Mr.Vikas Mahajan, CGSC with Mr.Deepak Goyal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% 25.10.2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Contract Agreement No.WB-72&73/G-14A (Re-bid)/XEN/WB dated 30.01.2014 for the procurement of plant, design, supply and installation of 220 KV Transmission line as per Bid No.WB/72 & 73/G-14A (Re-bid)/XEN/WB dated 03.01.2014 awarded by the respondent to the petitioner. The said Agreement contains an Arbitration Agreement in form of clause 46.5 of the General Conditions of Contract (GCC) read with clause 46.5 of the Particular Conditions of Contract (PC). There were other similar Agreements also executed between the parties.

2. Disputes having arisen between the parties, the petitioner

invoked the Arbitration Agreement for all Contracts, including abovementioned Contract Agreement vide notice dated 04.11.2016 proposing appointment of three member Arbitral Tribunal. The respondent in its response with respect to one of the Contracts, in turn, stated that as the appointment procedure is not mentioned in the Agreement, the petitioner may give consent to appointment of a Sole Arbitrator, to be appointed by the Managing Director of the respondent. No response was given by the respondent as far as other Contracts are concerned, including the present Contract. The petitioner, therefore, filed the present petition.

3. Counsel for the respondent submits that the letter invoking arbitration agreement was not in terms of the Arbitration Agreement between the parties, inasmuch as, it suggested appointment of a three member Arbitral Tribunal. He further submits that the notice invoking arbitration gave only 15 days to the respondent to respond and therefore, cannot be construed as a notice under Section 11 of the Act.

4. I have considered the submissions made by the counsel for the respondent. I find no merit in the same. The petitioner having invoked the Arbitration Agreement suggested a three member Arbitral Tribunal. The respondent, in response, suggested a Sole Arbitrator to be appointed by the Managing Director of the respondent. Therefore, both the parties could not agree on a procedure for appointment of an Arbitral Tribunal. As far as the time period of the notice is concerned, again the respondent having replied to the notice seeking appointment of an Arbitral Tribunal, cannot now plead lack of

adequate notice.

5. Be that as it may, the Arbitration Agreement having been admitted by the respondent, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

6. I appoint **Justice G.P.Mittal**, Retired Judge of this Court (H-37, Green Park Extension, New Delhi-110016, Mobile- 9910384619) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

7. I may note that apart from this petition, there are four more petitions filed by the petitioner seeking appointment of an Arbitrator and it is proposed to appoint the same Arbitrator in all the cases. However, each case will be treated as a separate reference by the Arbitrator. The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.

8. The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

OCTOBER 25, 2018
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