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

+ ARB.P. 265/2017

IVRCL LTD

..... Petitioner

Through: Mr Sumesh Dhawan and Ms Vatsala
Kak, Advocates.

versus

INDIAN OIL CORPORATION LIMITED

..... Respondent

Through: Mr Abhinav Vasisht, Sr. Advocate
with Mr Amit Meharia, Ms
Tannishtha Singh, Ms Ayushi Gupta
and Ms Rishita Hall, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.04.2018

1. 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 an agreement dated 15.02.2011 (hereafter 'the Agreement'). Although, there is some controversy as to the General Conditions of Contract (GCC) that are included as a part of the Agreement; there is no dispute that an arbitration agreement exists between the parties. The respondent has also filed the General Conditions of Contract, which according to the respondent forms a part of the contract between the parties. The said GCC includes an arbitration clause. The relevant extract of the said clause reads as under:-

“9.1.0.0 Subject to the provisions of Clauses 6.7.1.0, 6.7.2.0 and 9.1.1.0 hereof, any dispute arising out of a Notified Claim of the CONTRACTOR included in the Final Bill of the CONTRACTOR in accordance with the provisions of Clause 6.6.3.0 hereof, if the CONTRACTOR has not opted for the Alternative dispute Resolution Machinery referred to in Clause 9.2.0.0 in respect thereof, and any dispute arising out of an amount claimed by the OWNER against the CONTRACTOR shall be referred to the arbitration by an Arbitral Tribunal comprised of 3 (three) arbitrators selected in accordance with the provisions of the Arbitration & Conciliation Act, 1996. It is specifically agreed that the OWNER may prefer its Claim(s) against the CONTRACTOR as counter-claim(s). The CONTRACTOR shall not, however, be entitled to raise as a set-off, defence or counter-claim any claim which is not a Notified Claim included in the CONTRACTOR’s Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof.

9.0.1.1 The Sole Arbitrator referred to in Clause 9.0.1.0 hereof shall be selected by the CONTRACTOR out of panel of 3 (three) persons nominated by the OWNER for the purpose of such selection, and should the CONTRACTOR fail to select an arbitrator within 30 (thirty) days of the panel of names of such nominees being furnished by the OWNER for the purpose, the Sole Arbitrator shall be selected by the OWNER out of said panel.”

2. Mr Vasisht, learned Senior Counsel appearing for the respondent earnestly contended that the claims sought to be raised by petitioner are not arbitrable as the claims are “Notified Claims”. He; however, does not dispute the existence of an arbitration agreement.

3. After some arguments, Mr Vasisht submits that the respondent shall,

without prejudice to all rights and contentions, furnish a panel of three names to the petitioner and the petitioner may select any one of them to be appointed as an arbitrator. He further states that all the three persons to be proposed would be the former Judges of the High Court or the Supreme Court of India. The same is agreeable to the petitioner.

4. In view of the consensus between the parties, it is directed that the respondent shall furnish a panel of three names of former judges of the High Court or Supreme Court to the petitioner, within a period of four weeks from today. The respondent shall select one name out of the said panel and the Arbitral Tribunal would be constituted by the said Sole Arbitrator. This would be subject to the said arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

5. All rights and contentions of the parties, including whether the disputes are arbitrable are reserved.

6. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

APRIL 04, 2018

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