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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 723/2018

ATYATI TECHNOLOGIES PRIVATE LIMITED Petitioner

Through: Mr.Ajay Bhargava, Mr.Aseem
Chatuvedi, Advs.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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31.10.2018

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 on behalf of the respondent for constitution of the Arbitral Tribunal to adjudicate the disputes that have arisen between the parties in relation to the Agreements dated 08.10.2010 and 29.11.2011.

2. The Agreement dated 08.10.2010 contains an Arbitration Agreement in form of Clause 12 thereof, which is reproduced hereinbelow:

"12. ARBITRATION

Except as otherwise provided herein, any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration, by either Party if any such dispute is not settled by the Parties within thirty (30) days of receipt of notice of a claim from the aggrieved Party (or after such extension, if any, agreed in writing by both the Parties.)

a. The arbitration shall be conducted in English language and

shall be held in New Delhi, India. Arbitration proceedings shall be conducted in accordance with the Indian Arbitration and Conciliation Act 1996.

b. The Parties may appoint a sole arbitrator by mutual agreement, failing which, each Party to the dispute or claim shall appoint one arbitrator, and the two arbitrators so appointed shall then by mutual agreement appoint an impartial third arbitrator before commencement of the proceedings. Should the initial two arbitrators fail to choose a third arbitrator within ten (10) Business Days of the appointment of the second Arbitrator each of the initial two arbitrators shall propose the names of three impartial arbitrators of whom the other shall strike two, and the decision shall be made from the remaining two by drawing lots.”

3. The Arbitration Agreement is contained in Clause 13 of the Agreement dated 29.11.2011 in identical terms.
4. Counsel for the petitioner submits that as the two Agreements were in relation to the work of Financial Inclusion Plan-Phase-I and Phase-2 separately, a common petition has been filed for the two Agreements.
5. The petitioner invoked the Arbitration Agreement vide its notice dated 02.07.2018 read with notice dated 12.07.2018. In the said notices, the petitioner proposed the name of a Sole Arbitrator and further stated that in case the same is not agreeable to the respondent, such Arbitrator is to be considered as a nominee Arbitrator on behalf of the petitioner.
6. Having failed to receive any response from the respondent, the present petition was filed.
7. Notice on this petition was issued to the respondent on 26.09.2018. In spite of service of the notice, none appeared for the

respondent.

8. As the existence of the Arbitration Agreements and the due invocation thereof are not denied by the respondent, I see no impediment in appointing a nominee Arbitrator for the respondent to adjudicate the disputes that have arisen between the parties in relation to the above-mentioned two Agreements.

9. At this stage and in the absence of the respondent, it would not be possible for this Court to arrive at a conclusion if the two Agreements constitute part of a single transaction. Therefore, following the ratio of the judgment of the Supreme Court in *Duro Felguera, S.A. vs. Gangavaram Port Ltd.* (2017) 9 SCC 729, I appoint the same nominee Arbitrator for the respondent, making it clear that the Arbitral Tribunal would consider this to be a case of two separate references in relation to each of the contracts respectively.

10. I appoint **Justice G.P.Mittal** (Retired Judge of this Court), H-37, Green Park Extension, New Delhi-110016, Mobile-9910384619 as the nominee Arbitrator on behalf of the respondent. The two Arbitrators shall thereafter proceed to appoint a Presiding Arbitrator in terms of the Arbitration Agreements between the parties.

11. The Arbitrators shall give disclosure under section 12 of the Act before proceeding with the reference. The arbitration fee shall be governed by the Fourth Schedule of the Act.

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

NAVIN CHAWLA, J

OCTOBER 31, 2018/RN