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

+ ARB.P. 464/2017

JINDAL SAW LIMITED

..... Petitioner

Through: Mr P. K. Mittal, Advocate.

versus

REGEN POWERTECH PRIVATE LIMITED
& ANR.

..... Respondents

Through: Mr Anush Raajan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.03.2018

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 resolve the disputes that have arisen between the parties in respect of five separate agreements – Supply Contract, Erection & Commissioning Agreement, Agreement for Generation Guarantee, Operation and Maintenance Contract and Land Procurement Contract – all dated 21.09.2009 (hereafter 'the Agreements'). All the aforesaid contracts include an identically worded arbitration clause, which reads as under:-

“20. Dispute Resolution

20.1 If a dispute arises, the parties should intimate the nature of the dispute within a period of two weeks from the date of the dispute.

20.2 The parties shall reach a just and equitable solution within period of 1 month from the date of receipt of the intimation.

20.3 If the dispute still persists then the same shall be referred to the arbitration of a single Arbitrator, if agreed upon, otherwise to three Arbitrators, one each to be appointed by Owner and Supplier and the third shall be appointed mutually by the two Arbitrators appointed by the parties. The third Arbitrator shall act as the Presiding Arbitrator. The award of the said single Arbitrator or the three Arbitrators, as the case maybe, shall be final and binding on both the parties. The arbitrators shall give reasoned award. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and the rules framed there under and read with all statutory amendments and modifications thereof. The venue for arbitration proceedings shall be at New Delhi.

20.4 The language of the arbitration shall be English. The cost of Arbitration shall be equally shares between the parties.”

Work under this Contract shall be continued by Supplier, provided the Owner will make payment as per contract, during the arbitration proceedings, unless otherwise directed in writing by Owner or unless matter is such that the work can not possibly be continued until the decision of the arbitrator is obtained.

Notwithstanding any arbitration/proceedings, Owner and Supplier will carry out their respective obligations of the contract, unless such obligation itself is the subject matter of arbitral proceedings.

20.5 Neither party may commence arbitral proceedings pursuant to clause 20.3 unless the parties have undertaken the process set out in clauses 20.1 and 20.2 and that process has failed to resolve the dispute or one of the parties has attempted to follow that process and the other party has failed to participate.”

2. It is apparent from the above that in terms of the arbitration clause, the petitioner was required to intimate the nature of disputes to the respondents. If the same were not resolved within the period of one month from the date

of intimation, the same would be referred to the arbitration of a single Arbitrator, if agreed upon by the parties failing which to the Arbitral Tribunal comprising of three Arbitrators. The learned counsel appearing for the respondents does not dispute the arbitration clause. He, however, submits that the petitioner has not invoked the arbitration clause as yet.

3. It is seen from the record that the petitioner had issued letters calling upon the respondents to pay the amounts demanded and had also unequivocally stated that failing the same, the matter would be referred to arbitration. However, it is seen that the petitioner had merely stated that the petitioner would invoke the arbitration but had not invoked the arbitration clause. Once the petitioner invokes the arbitration clause, the parties would have to try and agree on appointment of a Sole Arbitrator, failing which the Arbitral Tribunal of three members would be required to be constituted in terms of Clause 20.3 of the Agreements as quoted above.

4. Since the petitioner has not invoked the arbitration clause as yet; the present petition is premature.

5. The petition is, accordingly, disposed of, leaving it open for the petitioner to invoke the arbitration clause by calling upon the respondents to agree for appointment of an arbitrator in terms of the Dispute Resolution Clause of the Agreements.

VIBHU BAKHRU, J

MARCH 05, 2018/MK