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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 13.11.2018

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ARB.P. 734/2017

M/S. POWERGRID CORPORATION OF INDIA LIMITED

..... Petitioner

Through Mr. Jeshna Sanvel, Mr. Christcher E.
And Mr. Rajat Agnihotri, Advs.

versus

M/S. G.E.T. POWER LIMITED,

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 This is a petition seeking appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

2 Notice in this petition was issued on 20.11.2017. After several attempts, it appears that the respondent has been served. Despite service, there was no appearance on behalf of the respondent. On the previous date i.e. 25.10.2018, the matter had to be adjourned as the main counsel for the petitioner was not available. However, it was recorded in the very same order that as per the affidavit of service filed by the petitioner, the respondent has been served.

3 Briefly, the case of the petitioner is that it had invited bids via

Domestic Competitive Bidding Process for supply of equipment and material and for provisioning of service. The supply of equipment and material included designing, engineering, manufacturing, testing etc.

3.1 Insofar as provisioning of services was concerned, the tender sought bids for complete construction, execution and commissioning of proposed switching stations under supplementary transmission system associated with the Vallur Thermal Power Station. It was proposed to set up a station having an output of 765/400 KV (in short 'subject work').

4 It appears that the respondent was the successful bidder and, accordingly, notices of award, both for supply of equipment and services were issued in its favour. The notices of award issued, qua the supply of equipment and services are of even date i.e., 20.10.2011.

4.1 Pursuant to the above, two formal contracts of even date i.e. 11.11.2011, were executed between the parties.

5. It is the petitioner's case that the respondent had delayed the execution of the subject work and, therefore, the contracts had to be terminated after issuance of notice in that behalf. The petitioner claims that the tenure of the agreement was 24 months. It is also the petitioner's case that it had served a provisional demand notice in the sum of Rs.10 crores on the respondent in respect of "tentative excess expenditure" incurred by it. The provisional demand was raised, it appears, by the petitioner on 09.02.2016.

6. The petitioner claims that since the demand was not satisfied, a notice dated 06.05.2017 was served on the respondent, triggering the arbitration agreement incorporated in Clause 39 of the General Conditions of Contract (in short 'GCC').

6.1 The petitioner claims that it did not receive any response to the aforesaid notice.

7. It is in these circumstances that the petitioner had approached this Court.

8. In view of the fact that there is no rebuttal, there is obviously no denial on record with regard to the existence of the arbitration agreement.

8.1 Thus, having regard to the submissions made before me and the assertions made in the petition, I am inclined to appoint an Arbitrator.

9. Mr. Jeshna Sanvel, who, appears for the petitioner, says that he would have no objection if this Court were to appoint a neutral Arbitrator in the matter.

10. Consequently, Hon'ble Mr. Justice D.K. Jain, former Judge of the Supreme Court, is appointed as an Arbitrator in the matter. The learned Arbitrator will be paid fees as per the provisions of the Fourth Schedule appended to the 1996 Act.

10.1 The petition is disposed of in the aforesaid terms.

11. The Registry will dispatch a copy of this order to the learned

Arbitrator as well as the respondent at the address given in the petition.

RAJIV SHAKDHER, J

NOVEMBER 13, 2018

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