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

+ **ARB.P. 808/2017**

NSSL PRIVATE LIMITED

..... Petitioner

Through: Mr Puneet Jaiswal, Advocate.

versus

**FERNAS CONSTRUCTION INDIA PRIVATE
LIMITED**

..... Respondent

Through: Mr N. Prashant Kumar Nair,
Advocate.

Mr Abhishek Nandu, Advocate for
SBI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.05.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“1. Refer the matter to Delhi International Arbitration Centre and thereby appoint Sole Arbitrator, in terms of the arbitration clause, as contained in Clause 33.01 of the General Terms and Conditions of Purchase (GPC), and the provisions of Section 11 of the Arbitration and Conciliation Act, 1996, as to adjudicate the disputes of arbitral nature, which have so arisen between the parties to the present petition; and”

2. The disputes between the parties have arisen in respect of two separate contracts. It is stated that the respondent had issued a Letter of Intent (LOI) dated 26.02.2013 for execution of the works of '*Design, Engineering, Manufacturing, Testing at Manufacturing works & Supply of*

Gate/Globe/Check Valves as per the scope defined in the Purchase Requisition and Annexure-I for OPAL-Dahej Project Gujarat (hereafter 'Dahej Project'). The respondent had also issued another LOI dated 29.08.2012 for supply of Gate-Check Vales for IOCL Paradip South Jetty Pipe Line Project (hereafter 'IOCL Jetty Project').

3. Pursuant to the LOI dated 26.02.2013 for the Dahej Project, the respondent had issued a Purchase Order dated 04.04.2013. And, pursuant to the LOI dated 29.08.2012, the respondent had issued a Purchase Order dated 19.06.2013 and an amended Purchase Order dated 29.11.2014.

4. The General Conditions of Contract as applicable to the said two contracts (namely the purchase order for the 'IOCL Jetty Project' and 'the Dahej Project') includes an arbitration clause, which is set out below:-

“33.0 ARBITRATION

33.01 In the event of any dispute or difference of opinion between the Parties arising out of or in connection with the PURCHASE ORDER or with regard to performance of any obligation hereunder by either party, the Parties hereto shall use their best efforts to settle such disputes or difference of opinion amicably by mutual negotiation. Should the agreement not be reached, such dispute shall be referred to the Sole Arbitrator who shall be appointed with mutual consent of the parties. The arbitration shall be governed in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any applicable law on arbitration that may be in force then, and any amendments made thereto. The decision of such arbitration shall be final and binding on both Parties. Venue of such arbitration shall be at New Delhi only. The Language of the arbitration proceeding shall be in English

33.02 The responsibilities and obligations of the VENDOR

under the PURCHASE ORDER shall not be altered by reason of the arbitration being concluded. The VENDOR shall proceed with the Works with all due diligence during arbitration proceeding unless directed in writing by the PURCHASER.”

5. The learned counsel appearing for the respondent has no objection if the present petition is allowed and the Delhi International Arbitration Centre (DIAC) is directed to appoint an arbitrator to adjudicate the disputes that have arisen between the parties in respect of the contracts in question.
6. Accordingly, the petition is allowed and the DIAC is directed to appoint an Arbitrator to adjudicate the disputes between the parties falling within the scope of arbitration clause as set out above. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.
7. Although, the petitioner had preferred a consolidated petition, it is seen that there are two separate contracts and, therefore, it is necessary that separate arbitration proceedings be conducted in respect of the said contracts. However, since it is stated that the issues would be common it is direct that the same arbitrator be appointed in respect of both the contracts. The question whether the arbitral proceedings are to be clubbed together is left to be determined by the Arbitrator.
8. The parties shall appear before the Coordinator, DIAC on 30.05.2018 at 3:30 PM.
9. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MAY 21, 2018
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