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

+ ARB.P. 17/2018

SHREE KRISHNA PAPER MILL & INDUSTRIES LTD

..... Petitioner

Through Ms.Shabista Nabi and Ms.Kvati
Somvanshi, Advs.

versus

M/S SANJOG SUGARS & ECO POWER LTD. & ANR.

..... Respondents

Through Mr.Abhishek Malhotra, Ms.Deepa
Trigunayat and Ms.Rupsha Banerjee,
Advs.for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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24.05.2018

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 a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Power Purchase Agreement dated 18.04.2013. The said Agreement contains an Arbitration Agreement between the parties in form of Clause 18 which is reproduced herein below:

18. Dispute Resolution

If any dispute or difference of any kind whatsoever ("Dispute") shall arise between the PARTIES in connection with or arising out of this Agreement or out of the breach, termination or invalidity of the Agreement hereof, the PARTIES shall resolve them by resorting to the following in the order so mentioned:

a. PARTIES shall attempt to decide through mutual discussions in 15 days.

b. In case both the PARTIES are unable to resolve the issue of dispute or difference, the matter will be referred for arbitration as a measure of dispute resolution based on Arbitration and Conciliation Act, 1996 as per the following provisions:

i) Each PARTY shall nominate an arbitrator. The appointed Arbitrators shall select a third Arbitrator. If the appointed Arbitrators do not select the Third Arbitrator within 30 days from the date of their nomination for whatever reasons then the SELLER may send a list containing two Arbitrators name to the BUYER. The BUYER within 15 days on receipt of the list shall inform the SELLER his option of Arbitrator from and out of the list. If the BUYER fails to intimate his choice of Arbitrator from and out of the list then the SELLER may proceed in selecting the Third Arbitrator from and out of the list above referred. The third Arbitrator shall be selected before the initiation of the Arbitration proceedings.

ii) Each PARTY shall bear its own costs pursuant to Arbitration. The costs and fees payable to the arbitrators shall be equally shared by the PARTIES unless decided otherwise by the arbitrators pursuant to the award of Arbitration.

iii) Notwithstanding the existence of any Dispute, whether referred to arbitration or not, the PARTIES hereto shall continue to perform their respective obligations under this Agreement throughout the Term of this Agreement No payment shall be withheld by the BUYER during the course of Arbitration.

iv) The place of arbitration shall be at Delhi, India;

v) The language of the arbitration shall be English;

vi) The arbitration decision shall be binding on both PARTIES."

The disputes having arisen, the petitioner invoked the Arbitration Agreement vide its notice dated 06.07.2017. Having received no response, the present petition was filed by the petitioner.

Learned counsel for the respondents submits that the respondent no.2 is not a signatory to the Power Purchase Agreement and therefore, cannot be referred to arbitration. This is not disputed by the learned counsel for the petitioner. Respondent no. 2 is accordingly deleted from the array of parties.

It is further contended by the learned counsel for the respondents that in the present case, the Rajasthan Rajya Vidyut Prasaran Nigam Limited, Rajasthan State Load Despatch Centre and Jaipur Vidyut Vitran Nigam Limited would be necessary and proper parties and in their absence, arbitration proceedings cannot be proceeded with.

I have considered the submissions made by the learned counsel for the respondent. Admittedly, there is an Arbitration Agreement executed between the parties to the present petition. Whether the claim raised by the petitioner before the Arbitral Tribunal would require the presence of the above named parties, can only to be decided by the Arbitrator upon pursuing the claim and defence of the respective parties. This cannot be a ground for refusing appointment of an Arbitrator at this stage.

In view of the above, I do not see any impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Power Purchase Agreement. The Arbitration Agreement executed between the parties provides for appointment of an Arbitral Tribunal consisting of three Arbitrators. Learned counsels submit that as the claims and counter claims of the respective

parties is not of a high value, a Sole Arbitrator may be appointed by this Court.

I find merit in the contention of the learned counsels for the parties. Accordingly, parties are directed to appear before the Delhi International Arbitration Centre (DIAC) on 31st May, 2018 at 2.00 p.m. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The Arbitration and the fee shall be governed by the DIAC rules.

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

Dasti.

NAVIN CHAWLA, J

MAY 24, 2018/Arya