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

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Date of decision: 01.11.2019

+ ARB.P. 66/2019

ERA INFRA ENGINEERING LIMITED Petitioner

Through: Mr. Anil Seth, Advocate

versus

NATIONAL THERMAL POWER CORPORATION LIMITED

..... Respondent

Through: Mr. Bharat Sangal, Sr. Advocate with
Mr. Adarsh Tripathi, Mr. Anish Gupta
& Ms. Babita Kushwaha, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 ('Act').
2. Learned counsel for the respondent has filed a reply raising a preliminary objection that by the present petition, the petitioner is seeking to raise the same very claims which were raised before the already existing Arbitral Tribunal and in which proceedings, Award has been reserved.
3. Learned counsel for the petitioner on the contrary submits that the claims being sought to be referred through the present petition are different from those which are subject matter of pending arbitration. He submits that the disputes relate to a period post the invocation of notice in the earlier arbitration. Learned counsel has drawn the attention of this Court to the list

of claims which are a part of the invocation notice with respect to the present petition and the statement of claim filed in the previous arbitration proceedings. Prima facie, a comparison shows that the claims are not similar to those which are part of the earlier proceedings. Be that as it may, the said question is left open to be decided by the Arbitral Tribunal.

4. At this stage, learned counsels for the parties submit that Sh. R.D. Goyal, who is the Arbitrator in the pending arbitral proceedings be appointed as an Arbitrator in this petition also since he is well conversant with the disputes between the parties and is already adjudicating part of the disputes with respect to the same contract.

5. In view of the stand of the learned counsels, Sh. R.D. Goyal, is appointed as the Sole Arbitrator to adjudicate the present disputes. The question of some of the disputes being similar or overlapping, as alleged by the respondent, is left open to be decided by the learned Arbitrator.

6. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.

7. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.

8. The petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 01, 2019

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