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

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Date of decision: 25.02.2020

+ ARB.P. 51/2020

MAN INDUSTRIES (INDIA) LTD

..... Petitioner

Through: Mr. Jayant Mehta, Mr. Nithin
Saravanan, Ms. Arunima Singh, Mr.
Parv Garg & Mr. Shivam Tandon,
Advocates

versus

GAIL INDIA LIMITED

..... Respondent

Through: Mr. Sanjeev Sagar & Ms. Nazia
Parveen, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'Act'), seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. Pursuant to the respondent inviting bids on 31.07.2017, the petitioner submitted its offer on 04.09.2017 and was declared as a successful bidder. Letter of Acceptance dated 22.12.2017 was issued in favour of the petitioner for supply of coated line pipes. The value of the contract was estimated at USD 142,442,447 and the scope of work was defined in the Letter of Acceptance. Disputes subsequently arose between the parties and being aggrieved by deduction of the PRS by the respondent, the petitioner initiated the Dispute Resolution Mechanism provided under the Contract. In terms of Clause 35 of the General Conditions of Contract (GCC), the petitioner initiated conciliation proceedings by sending a notice on 19.09.2019.

Despite receiving the said notice, the respondent did not respond to the same.

3. The petitioner then sent a notice dated 22.11.2019 invoking the Arbitration agreement between the parties and suggested three names to the respondent giving liberty to appoint any one of them as the Sole Arbitrator. However, the respondent did not respond even to the said notice. Hence the petitioner has filed the present petition.

4. General Conditions of Contract governing the parties contains Clause 30.4 which is the Arbitration Clause and reads as under:

“30. Resolution of Disputes/Arbitration

30.4 Arbitration

All disputes, controversies, or claims between the parties (except in matters where the decision of the Engineer-in-Charge is deemed to be final and binding) which cannot be mutually resolved within a reasonable time shall be referred to Arbitration by a sole arbitrator. The PURCHASER (GAIL (India) Limited) shall suggest a panel of three independent and distinguished persons to the Seller to select any one among them to act as the sole Arbitrator.

In the event of failure of the Seller to select the Sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right

of selection of Sole Arbitrator by the other party shall stand forfeited and the PURCHASER shall have discretion to proceed with the appointment of the Sole Arbitrator. The decision of the PURCHASER on the appointment of Sole Arbitrator shall be final and binding on the parties.

The award of the Sole Arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by the parties. The arbitration proceeding shall be in English language and the venue shall be at New Delhi, India.

Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act, 1996 and the rules framed thereunder shall be applicable. All matters relating to this contract are subject to the exclusive jurisdiction of the Courts situated in the State of Delhi (India)."

5. On the last date of hearing, learned counsel for the respondent had sought time to seek instructions in the matter with respect to the appointment of a Sole Arbitrator.
6. Learned counsel for the respondent on instructions submits that he has no objection to Sole Arbitrator being appointed by this Court.
7. With the consent of the parties, Mr. Justice Pradeep Nandrajog, former Chief Justice of Bombay High Court, is hereby appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
8. Address and mobile number of the learned Arbitrator is as under:

Mr. Justice Pradeep Nandrajog,
Former Chief Justice of Bombay High Court
K-29, Ground Floor, Hauz Khas Enclave,
New Delhi-110016
Mobile: 9818000130
9. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.
10. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
11. Copy of the order be sent to the learned Arbitrator for information.
12. The present petition is accordingly disposed of along with the pending applications in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 25, 2020/rd/