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

*Decided on 27<sup>th</sup> July, 2020*

+ **ARB.P. 228/2020 & I.A. 5223/2020**

M/S INDIAN POTASH LIMITED .... Petitioner  
Through Mr. Manish Kaushik and Mr.  
Mishal Johri, Mr. Sameer Sagar  
and Mr. B. Keshav Saini, Advs.

versus

M/S PREM SAKHI FERTILIZER LTD. (PSFL) .. Respondent  
Through Mr. Jeevesh Nagrath and Mr.  
Chandan Dutta, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE C .HARI SHANKAR**

**ORDER (ORAL)**  
**27.07.2020**

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(Video-Conferencing)

**C .HARI SHANKAR, J.**

**I.A. 5223/2020**

Allowed, subject to all just exceptions. The application is disposed of.

**ARB.P. 228/2020**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”), seeking appointment of an arbitrator.

2. The petitioner M/s. Indian Potash Limited claims an amount of ₹ 5,45,96,985.26 from the respondent, whereas the respondent claims, *per contra*, an amount of ₹ 7,01,75,964/- from the petitioner. Both parties, additionally, claim damages.

3. The arbitration clause, in the agreement between the parties, envisages appointment of an arbitrator by the petitioner. This, however, is not permissible in view of the law laid down by the Supreme Court in ***Perkins Eastman Architects DPC vs. HSCC (India) Limited***<sup>1</sup>.

4. Learned counsel are *ad idem* at the appointment of Hon'ble Mr. Justice Badar Durrez Ahmed, former Chief Justice of the High Court of Jammu and Kashmir and a distinguished retired Judge of this Court, as the sole arbitrator to arbitrate on the disputes between them, which, it may be said, pertains to Memoranda of Understanding, dated 16<sup>th</sup> September, 2013 and 8<sup>th</sup> August, 2016 as well as a supplementary agreement, dated 9<sup>th</sup> November, 2017.

5. In view of the agreements between the parties, Hon'ble Mr. Justice Badar Durrez Ahmed (Retd.) is appointed as the sole arbitrator to arbitrate on the disputes between the parties. The learned sole arbitrator would be entitled to fees, in accordance with the Fourth Schedule of the 1996 Act. The learned sole arbitrator would also file the requisite disclosure, in accordance with Section 12 of the 1996 Act.

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<sup>1</sup> AIR 2020 SC 59

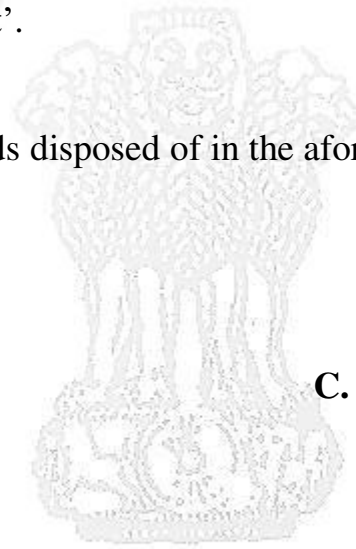
6. Counsel for both the parties may contact Hon'ble Mr. Justice Badar Durrez Ahmed (Retd.) (contact numbers 40453874, 7042205786, email id : badardurrez.arb@gmail.com) residing at 14, Friends Colony (West), New Delhi, to ascertain the schedule for the arbitration.

7. Learned sole arbitrator is at liberty to decide, after hearing the parties, who is to be treated as the 'claimant' and who is to be treated as the 'counter-claimant'.

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

**JULY 27, 2020**  
*r.bararia*

**C. HARI SHANKAR, J.**



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