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

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Date of decision: 06.09.2021

+ O.M.P. (T) (COMM.) 35/2021

AFCONS SENER LNG CONSTRUCTION PROJECTS PRIVATE
LIMITEDPetitioner

Through: Mr. Rajiv Nayar, Senior Advocate
with associate counsel

Versus

WESTERN CONCESSIONS PVT. LTD.Respondent

Through: Mr. Sanjeev Puri, Senior Advocate
with associate counsel

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been preferred by the petitioner seeking appointment of a substituted Arbitrator under the provisions of Section 15(2) r/w Sections 14 and 11(6) of the Arbitration and Conciliation Act, 1996.

2. For adjudicating disputes between the parties under the Engineering Procurement and Construction Contract for the LNG Regasification Terminal – No. HGPL-EPC-00001 dated 12.03.2015, an Arbitral Tribunal consisting of Mr. Justice B.P. Singh (Retd.), Late Mr. Justice Surinder Singh Nijjar (Retd.), and Mr. Justice Mukul Mudgal (Retd.) was constituted on 23

October 2018. Pertinently, appointment of late Mr. Justice Nijjar was appointed by this Court in ARB.P. 339 of 2018 on account of failure on the part of respondent to nominate an Arbitrator in terms of Clause 38 of the aforesaid contract. However, after conclusion of the final hearing, Mr. Justice Surinder Singh Nijjar (Retd.) passed away on 26.03.2021.

3. Learned counsel for petitioner submits that after demise of Mr. Justice Surinder Singh Nijjar (Retd.), another Arbitrator has to be appointed in this case.

4. At the hearing, learned counsel for petitioner has submitted that after demise of Mr. Justice Surinder Singh Nijjar (Retd.), respondent vide its e-mail dated 28.03.2021 sought appointment of Mr. Justice M.L.Varma (Retd.) as substitute Arbitrator, whereas respondent's right to nominate / appoint Arbitrator stood forfeited after appointment of Mr. Justice Surinder Singh Nijjar (Retd.) in ARB.P. 339 of 2018 by this Court.

5. The present petition has been vehemently opposed by learned senior counsel appearing on behalf of the respondent while submitting that appointment of Mr. Justice M.L. Varma (Retd.) as substitute Arbitrator has to be made in terms of Clause-38.6.6 of the Contract.

6. Today, during the course of hearing, learned senior counsel appearing

on behalf of both the sides have arrived at a consensus that instead of unilateral nomination, this Court may appoint a substituted Arbitrator in the present case.

7. Accordingly, **Mr. Justice (Retd.) Rajiv Sahai Endlaw (Mobile: 9717495002)** is appointed substituted Arbitrator in the present case.

8. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

10. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 06, 2021

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