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

% ***Date of decision: 17.09.2021***

+ **ARB.P. 778/2021**

M/S ARKAS ENERGY LLP

.....Petitioner

Through: Mr. Matragupta Mishra, Advocate

Versus

M/S INOX WIND LIMITED

..... Respondent

Through: Mr. Aseem Chaturvedi, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. Petitioner is a company incorporated under the provisions of the Limited Liability Partnerships Act, 2008. Respondent herein is a company registered under the Companies Act, 1956, which provides wind energy services including but not limited to manufacturing wind turbine generators.
3. According to petitioner, it was setting up an MW (2x2000 KW) wind farm project at Mandsaur District in the State of Madhya Pradesh, wherein

vide letter dated 25.06.2015 being Order No. 002/ Arkas/2015-16, petitioner had issued a work order for erection and commissioning of three INOX made WT-2000 DF (93/80) 2000 KW capacity wind turbine generators (WTG) at the site.

4. Further, vide letter dated 25.06.2015 being Order No. 001/Arkas/2015-16, petitioner claims to have issued a purchase order for three INOX made WT-2000 DF 93/80) 2000 KW capacity wind turbine generators (WTG) at the site. According to petitioner, the respondent was also responsible for installation of power evacuation systems and shared services, for evacuating power in the said project and had committed to the commissioning of the WTGs not later than 31.03.2016 but the said date was pushed several times.

5. Petitioner further claims that petitioner vide its letter dated 29.12.2015 asked the respondent to stick to the schedule however, despite repeated requests respondent failed to execute its part of obligations towards timely commissioning of the project. According to petitioner, respondent failed to reply to petitioner's communication dated 14.04.2016 and has thereby failed to commissioning of WTGs by 31.03.2016 and so, the commissioning certificates could not be issued. Further claimed that petitioner's reminders

dated 19.04.2016, 22.04.2016 and 25.04.2016 and Demand Notice dated 03.05.2016 have not been acknowledged by the respondent.

6. Petitioner claims to have suffered huge loss due to failure on the part of respondent to fulfil its part of obligations and therefore, it had issued a letter dated 15.12.2020 along with a debit note for claim of compensation of Rs.5,50,76,462/- with interest towards generation loss and loss of GBI, but even this has not been acknowledged by the respondent. It is in such circumstances, petitioner claims to have invoked 'Dispute Resolution Clause No.13" in terms thereof, issued a notice dated 25.02.2021 to respondent invoking arbitration under the Arbitration and Conciliation Act, 1996.

7. During the course of hearing, learned counsel for petitioner submits that vide aforesaid Notice dated 25.02.2021, petitioner has already nominated its Arbitrator but respondent has failed to respond thereto within stipulated time of 30 days, therefore, the preset petition be allowed.

8. During pendency of this petition, learned counsel for respondent had sought time to obtain instructions. Today, it is submitted by learned counsel that to resolve the disputes *inter se* parties, sole Arbitrator be appointed by this Court.

9. In view of the aforesaid, **Justice (Retd.) Kailash Gambhir (Mobile:**

9871300033) is appointed sole Arbitrator to adjudicate the disputes between the parties.

10. The fees of the learned Arbitrator shall be according to Fourth Schedule of the Arbitration and Conciliation Act, 1996.

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

12. A copy of this order be sent to the learned Arbitrator for information.

SEPTEMBER 17, 2021
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(SURESH KUMAR KAIT)
JUDGE

