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

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Date of decision: 18.11.2021

(i) + **ARB.P. 1100/2021, I.As.14884-85/2021**

RAYS POWER EXPERTS PVT. LTD Petitioner
Through: Ms. Surabhi Pandey, Advocate

Versus

LOHIA GRAMIN VIKAS PVT. LTD. & ORS. Respondents
Through: Mr. Shrey Yadav & Mr. Achal
Singh, Advocates

(ii) + **ARB.P. 1041/2021**

LOHIA GRAMIN VIKAS PVT LTD Petitioner
Through: Mr. Shrey Yadav & Mr. Achal
Singh, Advocates

Versus

RAYS POWER EXPERTS PVT LTD AND ORS. Respondents
Through: Ms. Surabhi Pandey, Advocate

(iii) + **ARB.P. 1042/2021**

LOHIA DEVELOPERS INDIA PVT. LTD. Petitioner
Through: Mr. Shrey Yadav & Mr. Achal
Singh, Advocates

Versus

RAYS POWER EXPERTS PVT LTD AND ORS. Respondents
Through: Ms. Surabhi Pandey, Advocate

(iv) + **ARB.P. 1043/2021**

DESIGNCO

..... Petitioner

Through: Mr. Shrey Yadav & Mr. Achal
Singh, Advocates

Versus

RAYS POWER EXPERTS PVT LTD AND ORS. Respondents

Through: Ms. Surabhi Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The above captioned four petitions have been filed under the provisions of Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator.

2. Pertinently, parties to these petitions are common and the subject matter of these petitions is also common, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of vide this common judgment.

3. M/s Rays Power Experts Pvt. Ltd. has raised grievances against Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco through their Directors, who are common in all these companies. Similarly, ARB.P.1100/2021; 1041/2021; 1042/2021 & 1043/2021

Lohia Gramin Vikas Pvt Ltd., Lohia Developers (India) Pvt. Ltd. and Designco have raised grievances against M/s Rays Power Experts Pvt. Ltd. as well as its Directors- Mr. Rahul Gupta & Ms Nidhi Gupta.

4. The claim of M/s Rays Power Experts Pvt. Ltd., who is engaged in the business of construction, commissioning, and Operation & maintenance of Solar Power Plants, is that it had entered into six different Engineering Procurement and Construction Agreements (“EPC Agreements”) for construction of Solar Power Plants/Projects and for the Operation & Maintenance (“O&M services”) of each of the Solar Power Plants for a period of 25 years from the commissioning of the Solar Plants with the Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco. Further claimed that it had completed the 6 Solar Projects as per the time scheduled in the EPC Agreements and respondents were evacuating power from the transmission lines constructed by the petitioner. However, Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco did not adhere to the repayment schedule and only a part of project cost was paid despite various requests while stating that O&M related payments were to be made depending upon the generation guarantee and

they were entitled to the payments qua generation loss incurred. This was disputed by M/s Rays Power Experts Pvt. Ltd., however, parties arrived at a conciliation in October, 2018, which failed and so, it decided to terminate the O&M agreement.

5. It is further claimed by M/s Rays Power Experts Pvt. Ltd. that petitions under Section 9 of the Act were filed by Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco before District Court, Bikaner which were dismissed on 16.12.2019 on jurisdictional aspect with direction to approach the appropriate jurisdiction of NCT of Delhi. Thereafter, petitions were filed before Delhi District Court (South), which were disposed of with direction to allow M/s Rays Power Experts Pvt. Ltd readings with DISCOM representatives and enter the Solar Power Plant for routine inspection and to pay a total sum of Rs.5,00,000/- in two monthly instalments i.e., by or before 15th July, 2020 and 15th August, 2020. Further, vide order dated 23.09.2020 and 30.06.2020 in two different petitions, directions were given to pay amount of Rs.5,00,000/-and Rs.2,50,000/- respectively under different heads.

6. It is further averred by M/s Rays Power Experts Pvt. Ltd. that Lohia

Gramin Vikas Pvt. Ltd. and Lohia Developers (India) Pvt. Ltd. had thereafter invoked arbitration in terms of Article-15 of EPC Agreement dated 12.09.2020, in reply to which M/s Rays Power Experts Pvt. Ltd vide notice dated 04.12.2020 had invoked arbitration against all the three companies Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco, which was not replied to and so, a prayer is made before this Court for appointment of sole Arbitrator.

7. On the contrary, the stand of Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco, is that though the execution of “EPC Agreements” is not disputed, however, its engineers were never allowed/ permitted to take reading of the power generated park as per work order for the reason sub-standard machines were used by M/s Rays Power Experts Pvt. Ltd. to generate power in the solar plant. When their repeated efforts for inspection of the plant failed, petitions under Section 9 of the Act were filed before the Court at Bikaner to seek interim relief for breach of terms and agreements, which were dismissed while giving liberty to approach the appropriate jurisdiction at NCT of Delhi. Thereafter, Section 9 petitions were filed in Delhi, which were partly allowed and the disputed

portion of the order was challenged before this Court, which were later withdrawn. However, when M/s Rays Power Experts Pvt. Ltd. on 18.07.2020 disconnected the transmission line of the solar power plant, which cause huge financial losses, so, Lohia Gramin Vikas Pvt. Ltd.; Lohia Developers (India) Pvt. Ltd. and Designco invoked arbitration vide Notices dated 12.09.2020, 12.09.2021 and 19.01.2021 respectively.

8. During the course of hearing, learned counsel appearing from both the sides neither disputed the execution of “EPC Agreements” between the parties nor that disputes/difference have to be resolved through arbitration in terms of Article-15 of EPC Agreements dated 22.5.2013, 08.01.2014, 11.08.2014, 03.02.2016, 03.03.2016 & 12.09.2020. Thereby, learned counsel reached a consensus that an Arbitrator may be appointed by this Court to resolve the disputes between the parties. Hence, these petitions are allowed.

9. Accordingly, **Ms. Justice (Retd) G. Rohini (former Chief Justice of this Court) (Mobile: 8527027027)** is appointed sole Arbitrator in these petitions to adjudicate the dispute between the parties.

10. The fee of the learned Arbitrator shall be governed by the 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. The date of 10.01.2022 in ARB.P.1041/2021; 1042/2021 and 1043/2021 stands cancelled.

13. These petitions are accordingly disposed of.

14. Pending applications also stand disposed of.

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

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 18, 2021

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