$~3

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

\+ ARB.P. 759/2023

ACME SOLAR ENERGY (MADHYA PRADESH) PVT.LTD

..... Petitioner

Through: Mr. Dhanesh Relan, Mr. Brinda Batra, Advs. and Mr. Akhil Dehlan.

versus

HITACHI HI-REL ELECTRONICS PRIVATE LIMITED

..... Respondent

Through: Mr. Vivek Sood, Sr. Adv., Mr. Prasouk Jain, Ms. Rabiya Thakur, Mr. Saurabh Mishra, Mr. Raunak Gupta and Ms. Palak Bishnoi, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **29.04.2024**

1. Mr. Relan, learned counsel for the petitioner made an oral request to implead ACME Cleantech Solutions Ltd (***"ACSL"***) as a party to the petition. The same is allowed and Mr. Relan shall file a *vakalatnama* within one week from today.

2. This is a petition seeking appointment of Presiding Arbitrator as per the provision of Arbitration and Conciliation Act, 1996 (***"Act of 1996"***) pursuant to Clause 14 of the Purchase Order dated 06.03.2013 bearing No. PO/Proj1MP/Inverter/001 (***"Purchase Order"***) to adjudicate the petitioner's claims and subsisting disputes between the parties arising out of PO.

3. The brief facts are that the ACSL entered into an agreement by virtue of Purchase Order for design, engineering, manufacturing, testing, packaging, forwarding and supply of 40 inverters of Hitachi make Solar PCS-630 KW for 25 MW Solar Power Plant at Village Khirchipur, District Rajgarh, Madhya Pradesh. Under the said Purchase Order, the respondent was to design, engineer, manufacture, test, package, forward and supply of 40 inverters in conformity with technical specification. The relevant clauses of the Purchase Order reads as under: -

> *"10.00 Transfer of Warranty and Guarantee*
> *10.01 The Warranty (5years), Extended Warranty (from 6th to 10th year), Defect Liability, Plant Uptime Guarantee (99% for the first 5 years) and other provisions of this PO can be assigned from the original owner (ACSL) to any assignee and will remain effective as per the provisions of this contract.*
>
> …………. ………… ……………
>
> *14.00 Settlement of Disputes*
> *14.01 Any dispute or difference arising between the parties under the Purchase Order, as to their respective rights or obligations in terms hereof or connected herewith or incidental hereto or as to the interpretation of any of the terms hereof, shall be governed by the Laws of India. The venue of the Arbitration shall be Delhi. The Arbitration shall be by the sole arbitrator and in the event, parties are unable to agree on appointment of the sole arbitrator, each party shall appoint one arbitrator and the two arbitrators shall appoint third arbitrator.*
> *14.02. The decision of any two of the three arbitrators shall be final and binding. The parties agree that the decision and any award rendered by the arbitrators in connection with a*
> *Dispute: Shall be final and binding on the Parties.*
> *14.03 The arbitration expenses shall be borne as per the award of arbitration if same are given in the award of arbitration else*

same shall be borne by the losing party.
14.04 Notwithstanding any reference to the Arbitration herein:
a) The parties shall continue to perform their respective obligations under the contract unless they otherwise agree.
b) Either party shall pay to other party the sum due to such other party under the provisions of the contract, unless any such payment itself is under reference to Arbitration.

………….. ……………. ………….

18.00 Assignment
18.01 HITACHI hereby consents to the grant and creation by ACSL of a security interest in and assignment of this PO and any and all of the ACSL's rights, title and interests in and under this PO in favour of any Lender or its security agent or transfer, and in furtherance of and to give effect to such security interest and assignment, HITACHI agrees to enter into such Contracts, direct Contracts and consents and deliver such legal opinions as are reasonably customary and as may be required by any of the Lenders. Hitachi shall not bear any legal, documentation or any other costs out of its pocket. This clause is subject to the condition that in case of assignment the rights of HITACHI shall not be repudiated in any way
18.02 HITACHI shall not be entitled to assign any part of the PO or any benefit or interest in or under this PO without prior written consent of ACSL."

4. It is stated by Mr. Relan, learned counsel for the petitioner that the ACME Solar Energy (Madhya Pradesh) Pvt. Ltd. (***"ASEPL"***) was always the owner of the project and ACSL was only the executing agency. He draws my attention to a letter dated 17.04.2014 of the respondent written to ASEPL which reads as under:-

"Date: 17/4/2014
Ref No.: PO/Porj 1 MP/lnverter/001

TO
ACME Solar Energy (Madhya Pradesh) Pvt Ltd.
Plot No. 152, Sector -44, Gurgaon - 122002
Kind Attn.: Mr. Abhishek Tulsyan, Manager - Procurement
Subject: Assignment of Warranties from Acme Cleantech Solutions Limited (EPC) to Acme Solar Energy (Madhya Pradesh) Pvt Ltd (Project Owner).
Reference:

1) Po. No. PO/Porj 1 MP/Inverter/001 Dated: 613/2013
2) Your letter dated 3rd April 2014.

Dear Sir,
In reference to clause no. 18.0 of above mentioned PO, we here by transfer assignment of warranties from Acme Cleantech Solutions Ltd to Acme Solar Energy (Madhya Pradesh) Pvt Ltd. W.eJ., 1st April 2014 for scope of supply as mentioned in PO No.PO/Porj 1 MP/inverter/001 Dated: 613/2013

For M/s Hitachi Hi-Rel Power Electronics Pvt. Ltd.

Authorised Signatory
17/4/2014"

5. As there were disputes between the parties, numerous exchanges of letters took place. Some of the letters are relevant and need to be quoted. On 15.09.2020, the ASEPL and ACSL informed the breach of contractual obligations to the respondent, the operative portion of the said letter reads as under:-

"10. That in an attempt to escape its liabilities, Hitachi, vide email dated 25.07.2020, first denied that the warranty was valid for a period of 10 years and then for the first time made bald allegation of improper maintenance causing the malfunctioning of the Inverters/products. It is stated that our Clients have

fulfilled all its obligations under the PO, including but not limited to the Preventive Maintenance of the Inverters and promptly informing Hitachi of any defects in the materials and/or workmanship of the Inverters.

11. That as recent as last week, once again there was Inverter(s) breakdown(s) at the Project Site and when Hitachi was called upon to repair/ replace the parts, Hitachi yet again in blatant disregard of the terms of the PO refused to honour the warranty obligation. Thus, once again having left with no choice our Clients placed order for spare parts under protest.

12. That our Clients are in the business of setting up solar power plants and cannot be expected to completely halt their operations due to electricity being essential service and also the constant generation loss being incurred on account of the defects in the Inverters/products. The failure to fulfil its contractual obligations, has led our Clients to incur heavy financial losses and difficulty in fulfilling its obligations to other third parties. It is stated that Hitachi never had the intention to fulfil its warranty obligations under the PO, as is evident from the conduct of Hitachi being in complete contravention to the terms and conditions under the PO accepted by Hitachi without any demur or protest. The conduct of Hitachi is distressing since our Clients and Hitachi share a long standing business relationship and such conduct affects future business opportunities.

13. Further, Hitachi had suggested that frequent breakdowns in the Inverters at the Project Site can be resolved by software up-

gradation for increased Power Shoot Up Time and AC Surge Power Device, Heater with Hygrostat. The same is evident from Hitachi's MOM dated 18.06.2020 and email dated 18.08.2020. It is pertinent to mention that the Inverters are under warranty and Hitachi is under the obligation to make necessary modifications/upgrades free of cost across for all Inverters, to eliminate these breakdowns

14. Hitachi has failed to failed its warranty obligations under the PO and is in breach of and continues to breach the terms of the PO and thus is liable to not only make good the expenses incurred by our Clients for repair of the Inverters but must also pay damages for the loss caused to our Clients by the breach as a result of its deliberate breach. Hitachi must also fulfil its warranty obligations under the PO for the entire warranty period.

15. Accordingly, basis the above facts and circumstances, we call upon Hitachi to do the following within 7 (seven) days of the receipt of the present notice:

a. fulfil the warranty obligations under the PO for the entire warranty period, i.e. 10 years (from the date of commissioning) and install, replace, repair the spare parts and any other parts and/or consumables required to rectify the poor performance and frequent breakdown of Inverters/products at the Project Site.

b. refund an amount of INR 69,51,210/- (Indian Rupees Sixty-Nine Lakhs, Fifty One Thousand, Two Hundred and

Ten only) being the expenses incurred (cost of spare parts purchased by our Clients and the installation thereto) during the period July 2019 and March 2020;

c. refund an additional amount of INR 4,47,810 (Indian Rupees Four Lakhs, Forty-Seven Thousand and Eight Hundred and Ten only) as cost of spare parts purchased by our Clients in September 2020; and

d. pay interest on the above amounts at the rate of 18% per annum."

6. The above said letter was replied by the respondent on 21.09.2020, wherein para 1 reads as under:-

"1) We are surprised to see your aforesaid legal notice and at the outset, we, M/s. Hitachi Hi-Rel Power Electronics Private Limited (herein after referred to as "HHPE") has to state that your clients viz. ACME Solar Energy (Madhya Pradesh) Private Limited and ACME Cleantech Solutions Private Limited [both herein after collectively mentioned as "ACME) has not apprised you the correct facts and has also concealed the facts now mentioned in this reply letter and the same has resulted into the issuance of this frivolous notice. It appears that ACME has misrepresented the true facts deliberately and has concealed serious lapses at their end."

7. The other part of the above letter dated 21.09.2020 relates to the disputes between the parties which are factual in nature and need not be quoted.

8. Subsequently, the ACSPL and ASEPL wrote another letter dated

23.10.2020 to the respondent, wherein after giving the background of the disputes to be adjudicated, proposed the name of Adv. Mr. Anuj Aggarwal, learned ASC as an Arbitrator. The letter dated 23.10.2020 was replied by the respondent vide letter dated 17.11.2020.

9. On 22.12.2020, the respondent wrote another reply to the legal notice dated 23.10.2020 wherein para 4-7 reads as under:-

> *"4. Further, the unwarranted demand for the extension of warranty beyond 60 months was raised for the first time in July 2020 to which detailed replies were given on multiple occasions. Similarly, on 21.09.2020, an exhaustive reply mentioning all the facts with necessary supporting documents and breach of maintenance terms were given in hope that the same would satisfy the claims of your client and would lead to an amicable solution. It is stated that our client has further extended all the assistance to your client in a very proactive and prioritized manner.*
>
> *5. Therefore, an invocation of Arbitration under Clouse 14 of PO by your client, Addressee No.2, is unwarranted. However, constrained by the same is informed that the sole arbitrator, Mr. Anuj Agarwal, recommended by your client is not acceptable to our client.*
>
> *6. Our client hereby recommends the name of Ms. Anjana Gosain, to act as the sole arbitrator to adjudicate the arbitration proceedings so initiated. The details of the same are as follows:-*
>
> *Ms. Anjana Gosain*
> *C-30, Lajpat Nagar-III,*

New Delhi-24

Tel: 011-23385773

Mob: 9810100674

Email:-anjanagosainchambers@gmail.com

7. Further, issuance of notice dated 23.10.2020 on behalf of your client, Addressee No. 3, is unsustainable and rejected as assignment warranties have already been transferred from Addressee No. 2 to Addressee No. 3 vide letter dated 17th April 2014."

10. The notice dated 27.01.2021 by the respondent is important for the adjudication of the present petition which reads as under:-

"Ref: 9174.A2.X1.1038

To,

Ms. Pragya Ohri, Advocate

Partner, Hemant Sahai Associates, Advocates,

Address: 91/1, Adchini, Sri Aurobindo Marg, New Delhi- 110017

Email- Id. aditi.soni@hsalegal.com

Subject: Reply on behalf of M/s Hitachi Hi-Rel Power Electronics Private Limited your response dated 20.01.2021 in furtherance of Notice Invoking Arbitration dated 23.10.2020 under Clause 14.00 of the Purchase Order bearing PO NO.-O/Pro 1MP/Inverter/001 dated 06.03.2013 issued on behalf of ACME Cleantech Solutions Private Limited and ACME Solar Energy (Madhya Pradesh) Private limited.

Dear Ma'am,

We hereby reply to your response dated 20.01.2021 under *instructions and on behalf of our client, Hitachi Hi-Rel Power Electronics Private Limited having its Registered Office situated at B-52, Corporate House, Judges Bunglow Road, Bodakev, Ahmedabad, Gujarat- 380054 (hereinafter referred to as "our client" "HHPE"], who has placed your response before us with the instructions to reply to the same in the following manner:*

1. Our Client is in receipt of your response dated 20.01.2021 and our client denies all the allegations levelled against it vide the said response except otherwise specifically admitted in the present reply.

2. It is reiterated from the reply dated 21.09.2020 and 22.12.2020 that no dispute has arisen in furtherance of Purchase Order No.- PO/ Proj1MP/ Inverter/ 00) dated 06.03.2013 (hereinafter referred to as 'PO' and invocation of Arbitration under Clause 14 of the PO is unwarranted as ACME Cleantech Solutions Private Limited had transferred warranties to ACME Solar Energy (Madhya Pradesh) vide letter dated 17.04.2014 and ACME Solar (Madhya Pradesh) has not entered into any Arbitration Agreement with our client.

3. Reserving the aforementioned stand and rights and constrained by the Invocation of arbitration by your client, our client has recommended the name of Ms. Anjana Gosain, to act as the sole arbitrator to adjudicate the arbitration proceedings so initiated.

4. Under Clause 14.00 of the PO, in the event the parties are not agreeable to the Sole Arbitrator, then each party has to appoint *one arbitrator and the two arbitrators will appoint the third arbitrator.*

5. As your client has rejected the appointment of Ms. Anjana Gosain as sole arbitrator, in terms of the PO, the arbitrator appointed by your client and Ms Anjana Gosain ought to appoint the third arbitrator and constitute the Arbitral Tribunal to adjudicate upon the alleged dispute raised by your client.

6. Our Client denies your suggestion to approach the Hon'ble High Court of Delhi for the appointment of the Sole Arbitrator.

7. A copy of the reply is attached herewith and kept in our office for future reference."

11. On 09.02.2022 the counsel for the respondent wrote another reply, which reads as under:-

"Ref: 9174.A2X1.1038

To, *Date: 09.02.2022*

1. Kshitiz Khera,

Associate Partner, Hemant Sahai Associates. Advocates, Address: 81/1, Adchini, Sri Aurobindo Marg, New Delhi-110017

Email id: newdelhi@hsalegal.com

2. M/s ACME Solar Energy (Madhya Pradesh) Private Limited

Plot No. 152, Sector-44, Gurugram-122002

3. M/S ACME Cleantech Solutions Private Limited

Plot No. 152, Sector-44, Gurugram-122002

SUBJECT: REPLY ON BEHALF OF M/S HITACHI HI-REL POWER ELECTRONICS PRIVATE LIMITED TO YOUR LEGAL NOTICE DATED 21.01.2022 INVOKING ARBITRATION

UNDER CLAUSE 14.00 OF PURCHASE ORDER HEARING NUMBER P.O. NO. PO/PROJIMP/INVERTER/001, DATED 06.03.2013.

Dear Ma'am Sir,

We, hereby reply to your Legal Notice dated 21.01.2022 under instructions and on behalf of our client, Hitachi Hi-Rel Power Electronics Pvt. Ltd. having its Registered Office at B-52, Corporate House, Judges Bunglow Road, Bodakdev, Ahmedabad, Gujarat- 380054 (hereinafter referred to as "our client" or "HHPE"). who has placed your Legal Notice before us with the instructions to reply to the same in the following manner:

1. At the outset it is informed to you that your client has not apprised you of the true facts of this case and has misguided your good office which has resulted in the issuance of the present frivolous notice. It is stated that your legal notice is without any dispute, unfounded and does not merit any consideration and our client denies all the allegations levelled by you against it, except otherwise specifically admitted in the present reply. Farther, present reply is without prejudice to the rights and contentions of our client in law.

2. Our client is a group company of is a "Hitachi" (Japan) Group, a multinational company which is recognized as a pioneer is power electronics. It is a leading manufacturer of an exhaustive and pioneering product range of power electronics and has garnered a significant level of rust in power electronics *market segment and offers world class power electronics products, value added services & customized solutions.*

3. Our client entered into a contract with your client vide PO No.- PO/Proj1MP/Inverter/001 dated 06.03.2013 (hereinafter 'PO') with a very optimistic approach and with the intension to build long-lasting business relations. All the invertors, 05 agreed upon were delivered and at par services were rendered to you on a priority basis. But it came to as a shock that your client miserably failed

i. Ms. Anjana Gosain
Advocate, Delhi High Court
C-30, Lajpat Nagar-II
New Delhi-24,
Tel: 011-23385773,
Mob: 9810100674,
Email:- anjanagosainchambers@gmail.com.

ii. Ms. Sushma Chowla
Former Vice President,
Income Tax Appellate Tribunal,
S-430, 2nd Floor, Greater Kailash Part I,
New Delhi-110048,
Mob 9960682130
Email: sushmachowla@gmail.cors

iii. Mr. Vivek Sood
Senior Advocate
172 Golf links

Delhi, India

vsoodsraadvocate@yahoo.com

+91991157196

8. Further, issuance of notice dated 21.02.2022 on behalf of your client, Addressee No.3. is unsustainable and rejected as assignment warranties have already been transferred from Addresses No. 3 to Addressee No. 2 vide letter dated 17th April 2014.

9. Lastly, our client has all points, been ready to assist and still extends the same willingness to provide the best experience to your client. No act or conduct of our client has amounted to deficiency in service and neither was the same contrary to the warranty obligations. Therefore in light of the reply, we request you to advice your client to withdraw the present legal notice and further not to initiate any unwarranted legal proceeding.

10. A copy of the reply is kept is our office for future reference.

Yours Sincerly,

Rabiya Thakur

Senior Associate"

12. It is also pertinent to quote the letter dated 18.05.2022 of the respondent and para 3,4 and 5 of the said letter reads as under:-

"3. It is reiterated that even though, an invocation of Arbitration under Clause 14 of PO by your client, Addresses No.2, is unwarranted. However, constrained by the same, our client recommends the name of the following, to act as the sole

arbitrator to adjudicate the arbitration proceedings so initiated. The details of the same are as follows:-

Ashutosh Kumar

Empaneled Arbitrator,

Delhi International Arbitration Centre (DIAC)

D-731 (L.G.F, Chittaranjan Park

New Delhi, Delhi-110019

Mob: 9711882978

4. It is reiterated that no act of conduct of our client has amounted to deficiency in service and neither was the same contrary to the warranty obligations. Therefore, in light of the reply, we request you to advice your client to withdraw the legal notice dated 21.01.2022, and further not to initiate any unwarranted legal proceeding.

5. It is also stated that nothing contained in this response shall be deemed to be a waiver of our Client's rights unless expressly done to so."

13. As per the petitioner, the parties could not arrive at the name of the presiding arbitrator, hence, the present petition has been filed seeking appointment of the Presiding Arbitrator.

14. Mr. Sood, learned senior counsel appearing for the respondent vehemently opposes the petition. He states that in the present case, the letter dated 17.04.2014 assigned only the warranties and there were no assignments of the arbitration clause. He states that the arbitration clause is a separate contract between the parties in the contract and the same was not assigned.

15. He further states that the Group of Companies doctrine is not applicable to the facts of the present case for the following reasons:-

1) Group of company's doctrine has never been pleaded.

2) Even if the word ACME is common between ASEPL and ACSL. The word does not connote that the ASEPL and ACSL are group of companies.

3) He states that the group of companies' doctrine is not applicable where there are assignment of rights as if the group of companies doctrine is applied the same would lead to the terms of assignment being rendered a nullity.

4) He states that the terms and condition of the assignment will overrule the group of company's doctrine.

16. Lastly, learned senior counsel states that even assuming without admitting that the group of companies' doctrine is applicable, the ACSL is not impleaded and ASEPL is the petitioner in the present case.

17. To buttress his arguments, he relies upon the judgment of ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696*** (Para 33) and ***Magic Eye Developers (P) Ltd. v. Green Edge Infrastructure (P) Ltd., (2023) 8 SCC 50*** (Para 12 and 13).

18. I have heard learned counsel for the parties.

19. In the present case, the clause 18 quoted above of the Purchase Order itself states that ACSL is competent to assign its rights, title and interest in the Purchase Order in favour of any lender or its security agent or trustee. The petitioner i.e. ASEPL has always being the owner of the project and ACSL was executing the work for and on behalf of ASEPL. Even otherwise, ASEPL was competent and assigned its rights under the Purchase Order to

ACSL. The said assignment was duly accepted by the respondent on 17.04.2014.

20. A perusal of the communications exchanged between the parties clearly shows that the notice invoking arbitration was issued by the petitioner i.e. ASEPL which was denied by the respondent only on the ground that the sole arbitrator so nominated by the petitioner was not acceptable to the respondent.

21. In notice dated 27.01.2021, the respondent states that the arbitration agreement was only vis-e-vis the ACSL and the respondent and not with ASEPL but the subsequent paras go on to show that they were to agreeable to reference of disputes between ASEPL and the respondent with the arbitrator of their choice. This shows the intention of the respondent to go for arbitration and the same also in my view constitutes an arbitration clause in terms of sub section (2) of Section 7 of Act of 1996.

22. The said reasoning according to me is good enough to allow the present petition.

23. In addition, the doctrine of group of companies has extensively been dealt by the Hon'ble Supreme Court in ***Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1***. The relevant extract reads as under:-

> *"**158**. The Group of Companies doctrine is based on determining the mutual intention to join the non-signatory as a "veritable" party to the arbitration agreement. Once a tribunal comes to the determination that a non-signatory is a party to the arbitration agreement, such non-signatory party can apply for interim measures under Section 9 of the Arbitration Act. Establishing the legal basis for the application of the Group of Companies doctrine in the definition of "party" under Section 2(1)(h) read with*

Section 7 of the Arbitration Act resolves the anomality pointed out by Ramana, C.J.

………

H. Conclusions

170. *In view of the discussion above, we arrive at the following conclusions:*

170.1. *The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;*

170.2. *Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;*

170.3. *The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;*

170.4. *Under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement;*

170.5. *The underlying basis for the application of the Group of Companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the non-signatory party to the arbitration agreement;*

170.6. *The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the Group of Companies doctrine;*

170.7. *The Group of Companies doctrine has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) along with Section 7 of the Arbitration Act;*

170.8. *To apply the Group of Companies doctrine, the Courts or tribunals, as the case may be, have to consider all* *the cumulative factors laid down in Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] . Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine;*

170.9. *The persons "claiming through or under" can only assert a right in a derivative capacity;*

170.10. *The approach of this Court in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] to the extent that it traced the Group of Companies doctrine to the phrase "claiming through or under" is erroneous and against the well-established principles of contract law and corporate law;*

170.11. *The Group of Companies doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements;*

170.12. *At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement; and*

170.13. *In the course of this judgment, any authoritative determination given by this Court pertaining to the Group of Companies doctrine should not be interpreted to exclude the application of other doctrines and principles for binding non-signatories to the arbitration agreement."*

24. A perusal of the communications reproduced above show that both ASEPL and ACSL were continuously communicating with the respondent and the respondent has in a way accepted the arbitration clause and proceeded to appoint its nominee arbitrator.

25. Mr. Sood also relies upon the e-mail dated 07.01.2022 to state that the

petitioner has been given up as a party to the Purchase Order. The said email reads as under:-

Gamandeep Kaur (Admin) D.R. & Associates

From:	Brinda Ajmani <brindaajmani@gmail.com>
Sent:	13 July 2023 15:13
To:	Anuradha Pal
Subject:	Fwd: In the matter of Arbitration between M/s Acme Cleantech Solutions Private Limited and Hitachi Hi Rel Power Electronic P. Ltd.

Brinda Batra (Advocate)
For DR & Associates
A2/ 133, Safdarjung Enclave, New Delhi
110029.
+91-7088660033

---------- Forwarded message ---------
From: **Neeraj Grover** <groverindia@hotmail.com>
Date: Sat, 7 Jan 2023 at 19:44
Subject: In the matter of Arbitration between M/s Acme Cleantech Solutions Private Limited and Hitachi Hi Rel Power Electronic P. Ltd.
To: anjanagosainchambers@gmail.com <anjanagosainchambers@gmail.com>
Cc: Neeraj Grover Advocate <neeraj.grover@galawchambers.com>

To
Ms. Anjana Gosain, Advocate

Respected Madam

I write to you with regards to the captioned matter.

Please find attached herewith the relevant communications exchanged between the counsel for the parties wherein upon not reaching an agreement with regards to the appointment of a sole arbitrator, M/s LPJ & Partners LLP acting for Hitachi Hi Rel Power Electronic Pvt. Ltd. have nominated you as their Nominee Arbitrator while M/s D.R. & Associates acting for Acme Cleantech Solutions Limited has nominated the undersigned as their Nominee Arbitrator.

We are now required to mutually agree on the name for the Chairman of the Arbitral Tribunal so that the matter can be proceeded further.

In the above background, I propose the following names, which may be considered by you

1. Hon'ble Mr. Justice G.S.Sistani (Retd)
2. Hon'ble Mr. Justice R.C.Chopra (Retd)
3. Hon'ble Mr. Justice Manmohan Singh (Retd)
4. Hon'ble Mr. Justice V.K.Shali (Retd)
5. Hon'ble Mr. Justice Jayant Nath (Retd)

You may please confirm the above at an early date.

ACME SOLAR ENERGY (MP) PVT. LTD.

1

26. The said letter *prima facie* appears to be issued by Mr. Neeraj Grover himself and have not been issued by either ACSL or ASEPL.

27. For the aforesaid reasons, the petition is allowed.

28. As both the parties have already appointed their respective nominee arbitrators, this Court is only required to appoint the presiding Arbitrator.

29. Even though the amount is less than Rs. 1 crore, the respondent is not agreeable to appointment of a Sole Arbitrator.

30. In this view of the matter, Mr. Anil Kumar Airi, Sr. Adv. (Mob: 9811087578) is appointed as the Presiding Arbitrator to adjudicate the disputes between the parties.

31. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

32. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

33. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

34. The parties shall approach the learned Arbitrator within two weeks from today.

35. The observations made by above are only for the purpose of adjudicating the present petition and will have no bearing in the arbitrations proceedings.

36. With these directions, the petition is disposed of.

JASMEET SINGH, J

APRIL 29, 2024/NG

Click here to check corrigendum, if any