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

+ ARB.P. 797/2024

M/S HITACHI ASTEMO HARYANA PVT LTDPetitioner

Through: Mr Karan Mehra, Adv.

versus

M/S AMPLUS SOLAR POWER PVT. LTD.Respondent

Through: Mr Rajdeep Choudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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17.09.2024

1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator for adjudication of disputes between the parties.

2. The petitioner and the respondent entered into a Solar Power Purchase Agreement dated 01.06.2016 wherein the respondent agreed to develop and install solar panels for generation and supply of electricity and also manage and maintain the solar panels at the factory premises of the petitioner. The respondent completed the project and the completion certificate was issued by the petitioner.

3. It is stated that since there was low output of the solar panels, the petitioner issued a Legal Notice dated 29.06.2022 and terminated the Agreement on 23.10.2023.

4. The arbitration clause is clause 13.2 of the said Agreement which reads as under:

“13.2 Arbitration

13.2.1 After the expiry of the period prescribed in Article 13.1.4, any



Party may refer the Dispute, by notice in writing to the other Party, to final and binding arbitration by a sole arbitrator to be appointed by and in accordance with the Arbitration and Conciliation Act, 1996.

13.2.2 The seat of the arbitration shall be in New Delhi.

13.2.3 The arbitral proceedings shall be conducted in English.

13.2.4 The arbitration award shall be final and binding on the Parties and the parties agree to be bound thereby and to act accordingly.

13.2.5 The arbitrator may award costs and expenses (including fees of its counsel) to a Party that substantially prevails on the merits.

13.2.6 Without prejudice to and subject to the indemnification provisions in this Agreement, the Parties shall equally bear the costs incurred in the arbitration unless otherwise awarded or fixed by the arbitrator.

13.2.7 The Parties shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced pursuant to this Agreement.”

5. The petitioner invoked arbitration vide Legal Notice dated 29.02.2024.

6. Mr Chaudhary, learned counsel appears for the respondent and states that even though a reply has been filed, the same is not on record. Copy of the reply has been handed over in Court today which is taken on record.

7. There is no objection to the appointment of an Arbitrator, provided the rights and contentions and counter-claims of the respondent are left open.

8. For the said reasons, the petition is allowed and the following directions are issued:-



- i) Mr. Vinam Gupta, Advocate (Mob. No. 9953054000) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) 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').
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
9. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 17, 2024/sr [Click here to check corrigendum, if any](#)