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

+ **W.P.(C) 14700/2022 & CM APPL. 45100/2022**

ARAVALI POWER COMPANY PRIVATE LIMITED

.....Petitioner

Through: Mr. Adarsh Tripathi, Mr. Vikram
Singh Baid, Mr. Ajitesh Garg,
Advocates

versus

RELIANCE INFRASTRUCTURE LIMITED & ANR. & ORS.

.....Respondents

Through: Mr. Ankur Kashyap, Mr. Aditya
Panda, Mr. Aman Bajaj, Mr. Akshay
Sinha, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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18.12.2024

1. The instant writ petition impugns order dated 06th April, 2021 passed by the Arbitral Tribunal, dismissing the Petitioner's application under Section 16 of the Arbitration and Conciliation Act, 1996 as well as an application seeking impleadment of Respondent No. 2 as a necessary party to the arbitration proceedings.

2. On 31st January, 2024, the Court passed the following order:

"1. Petitioner has approached this Court with the following prayers:

"1. Allow the present Petition and quash/set aside the impugned order dated 06.04.2021 passed in the arbitration initiated by the Respondent No. 1 Reliance vide Notice Invoking Arbitration dated 23.11.2018;

2. Direct that the arbitration initiated by the Respondent No. 1 Reliance vide Notice Invoking Arbitration dated 23.11.2018 be consolidated with the international



commercial arbitration being adjudicated by the Hon'ble International Commercial Tribunal appointed by the Hon'ble Supreme Court vide order dated 28.09.2021 passed in Arbitration Petition No. 26 of 2019 by treating the arbitration initiated by Respondent no. 1 Reliance as its counterclaims in the arbitration initiated by the Petitioner Aravali or in such other manner as this Hon'ble Court may deem fit and proper;

3. Award Costs and Litigation fees in favour of the Petitioner Aravali; and 4. Pass any other and further order as this Hon'ble Court Deems fit in the facts and circumstances of this case."

2. Material on record indicates that the Petitioner invited bids for installation of Flue Gas Desulphurization System Package from a fixed number of bidders having relevant qualifications to execute the work either themselves or in association with a Foreign Collaborator. The Respondent No.1 herein entered into a collaboration with Respondent No.2 and the contract was awarded to the Respondents No.1 & 2.

3. It is stated that disputes arose between the parties and Respondent No.1 invoked arbitration without making Respondent No.2 a party to the said arbitration and submitted its claims before the Tribunal. Petitioner herein filed an application before the Tribunal for impleading Respondent No.2 as a party to the arbitration.

4. The Petitioner herein filed an application under Section 11(6) read with Section 11(9) and 11(12)(a) of the Arbitration and Conciliation Act, 1996 before the Apex Court for appointment of an arbitrator to adjudicate upon the disputes that has arisen between the parties. The Apex Court appointed a Tribunal of three arbitrators to adjudicate on the dispute between the Petitioner and the Respondents No.1 & 2 and directed the Domestic Tribunal to dispose of the application of the Petitioner for impleadment of Respondent No.2.

5. The application of the Petitioner for impleadment of Respondent No.2 was dismissed by the Domestic Tribunal vide Order dated 06.04.2021. The Petitioner has, thereafter, filed the Present Writ Petition challenging the Order dated 06.04.2021 and also for clubbing of two arbitration petitions.

6. During the arguments, a question arose as to whether the effect of grant of prayers sought by the Petitioner in the Writ Petition would amount to converting a domestic arbitration to an international commercial arbitration and only the Supreme Court has the jurisdiction to constitute a Tribunal in an international commercial arbitration. This Court made a suggestion to the learned Senior Counsel appearing for the Petitioner that since the jurisdiction to constitute a tribunal in an international commercial arbitration is



only with the Apex Court, the Petitioner must approach the Apex Court by filing an appropriate application. Learned Senior Counsel, in deference to the suggestion made by this Court, prays for a short adjournment.

7. *List on 15.02.2024.*

8. *Needless to state that all rights and contentions of the parties are left open.”*

3. It is pointed out that, subsequent to the aforementioned order, the Petitioner filed a Miscellaneous Application No. 272/2024 in Arbit. Petition 26/2019 before the Supreme Court under Section 11 of the Arbitration and Conciliation Act, 1996. However, the same was dismissed by the Apex Court on 12th February, 2024.

4. Be that as it may, the arbitration proceedings have been concluded and the matter is now reserved for passing of the award.

5. In the above circumstances, counsel for the Petitioner states that he would like to withdraw the present writ petition and reserve the right to raise the grounds urged in the present petition, against the Arbitral Award, in case the need so arises in the future.

6. Dismissed as withdrawn with liberty as aforesaid.

SANJEEV NARULA, J

DECEMBER 18, 2024/ab