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

+ **ARB.P. 1337/2023**

KESARI ROLLER FLOUR MILLS PRIVATE LIMITED

..... Petitioner

Through: Mr. V. C. Shukla, Mr. Anantha
Narayana M. G., Mr. Siddharth
Relan, Mr. Mukul Rathore, Advs.

versus

HANGAL RENEWABLES PRIVATE LIMITED Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

29.02.2024

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1. By way of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties had entered into a Power Purchase Agreement dated 11.03.2022. It is submitted that the said Power Purchase Agreement contains an arbitration clause (Clause-23.5.2), which provides that all disputes, with respect to the said agreement, shall be referred to arbitration as per provisions of the A&C Act, and further provides that the place of arbitration would be at New Delhi.
3. Disputes having arisen between the parties, the petitioner invoked



arbitration vide legal notice dated 14.02.2023, to which no response has been received till date. The claim amount is stated to be around Rs. 29,40,22,685/-.

4. Section 3 of the Arbitration and Conciliation Act, 1996 provides as under:

“3. Receipt of written communications.

(1) Unless otherwise agreed by the parties,

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressees last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.”

5. It has been submitted that the affidavit of service has been filed as per which the respondents have been served through email. Learned counsel submits that the respondents are intentionally not appearing before the court.
6. Clause 23.5.1 and Clause 23.5.2 in the Dispute Resolution agreement of the Power Purchase Agreement contains the Arbitration Clause which is as under:



“23.5.1 The Parties agree to meet and confer in good faith on all matters of common interest or all controversies, claims or disputes under or arising out of or relating to this Agreement ("Dispute"). In case any such Dispute is recognized by either Party, it will communicate the substance of such Dispute to the other Party. Once a Dispute has been raised, the Parties shall make all reasonable efforts to reach a resolution within 30 (Thirty) Days after the Dispute has been notified to the other Party in writing.

23.5.2 In the event any Dispute which has not been resolved as provided in Clause 23.5.1 above, such Dispute shall be settled through final and binding arbitration through a sole arbitrator jointly appointed by the Parties under the Arbitration Act. The arbitration proceedings shall be governed by and conducted in accordance with the provisions of the Arbitration Act, and seat and venue of the arbitration shall be New Delhi. The arbitration shall be conducted in English language.”

7. Since the Power Purchase Agreement in the present matter contains an arbitration clause and there is an arbitral dispute between the parties. The arbitration has duly been invoked through notice dated 14.02.2023. The respondent has neither responded to the notice nor to the present petition.
8. In the circumstances, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) Ms. Justice Gita Mittal, Former Chief Justice, Jammu and Kashmir High Court, Mob. No. 9818000220 is appointed as the sole Arbitrator to adjudicate the disputes between the



parties.

- iii) 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 fees Schedule of DIAC.
- 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 claims, 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.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

DINESH KUMAR SHARMA, J

FEBRUARY 29, 2024/AR..