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

+ **ARB.P. 2055/2024**

VSV RENEWABLES PRIVATE LIMITED

.....Petitioner

Through: Ms. Sonam Gupta, Mr. Aryan Kumar
Tiwari and Mr. Shiva Pande,
Advocates.

versus

MAHATMA JYOTIBA PHULE ROHILKHAND UNIVERSITY

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

18.12.2024

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1. The instant petition has been filed by the Petitioner under Section 11(6) of the Arbitration & Conciliation Act seeking appointment of an Arbitrator for adjudication of disputes which have arisen between the parties under a Power Purchase Agreement dated 16.01.2018.
2. It is stated that under the said agreement, a solar plant was to be installed at the rooftop of the Respondent. It is stated that initially the Power Purchase Agreement was between the Respondent and one Fourth Partner Energy Private Limited. It is stated that a Novation Agreement dated 02.02.2019 was executed between the erstwhile power producer, i.e., Fourth Partner Energy Private Limited, the Petitioner herein and the Respondent whereby Fourth Partner Energy Private Limited transferred its rights, liabilities, duties and obligation under the agreement to the Petitioner herein.



3. It is pertinent to mention few of the clauses in the Power Purchase Agreement and the Novated Agreement. Clause 17.7 of the Power Purchase Agreement which deals with governing laws of jurisdiction, reads as under:-

“17.7 Governing Law & Jurisdiction

(a) This Agreement shall be governed by and construed in accordance with the laws of India. The Parties agree that the courts in Delhi shall have jurisdiction over any action or proceeding arising under the Agreement.

(b) In the event of any Dispute, difference of opinion or dispute or claim arising out of or relating to this Agreement or breach, termination or the invalidity thereof, shall firstly be attempted to be resolved by conciliation. Any Dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure given below. The Parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made. Cost of conciliation shall be equally shared by both the parties.

(c) Arbitration Procedure:

Settlement of Dispute :

If any dispute of any kind whatsoever arises between Purchaser and Power Producer in connection with or arising out of the contract including without prejudice to the generality of the foregoing, any question regarding the existence, validity or termination, the parties shall seek to resolve any such dispute or difference by mutual consent.

If the parties fail to resolve, such a dispute or



difference by mutual consent, within 45 days of its arising, then the dispute shall be referred by either party by giving notice to the other party in writing of its intention to refer to arbitration as hereafter provided regarding matter under dispute. No arbitration proceedings will commence unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with Sub Clause, shall be finally settled by arbitration.

In case the Contractor (Power Producer) is a Public Sector Enterprise or a Government Department:

In case the Contractor is a Public Sector Enterprise or a Government Department, the dispute shall be referred for resolution in Permanent Machinery for Arbitration (PMA) of the Department of Public Enterprise, Government of India. Such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

In All Other Cases



In all other cases, any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

The Purchaser and the Power Producer shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within Thirty (30) days after the later of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for third arbitrator which shall be the President, Institution of Engineers.

If one party fails to appoint its arbitrator within thirty (30) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator. If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in Clause (Governing Law) and a substitute shall be appointed in the same manner as the original arbitrator.

Arbitration proceedings shall be conducted with The Arbitration and Conciliation Act, 1996. The venue or arbitration shall be New Delhi.

The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration panel, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from



such enforcement.

The arbitrator(s) shall give reasoned award.

Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree.

Cost of arbitration shall be equally shared between the Power Producer and Purchaser.”

4. The project was to be installed at Bareilly. The parties to the contract were in Hyderabad. Even after the novation of the agreement, the Petitioner is also in Hyderabad. Though no part of the cause of action arose in Delhi yet Clause 17.7 of the agreement confers jurisdiction at the Courts in Delhi where no part of the cause of action arose.

5. It is a settled law that if there are two Courts having jurisdiction, parties by agreement can exclude the jurisdiction of one court but parties cannot by agreement confer jurisdiction on a Court which otherwise does not have jurisdiction. Clause 17.7 (c) which is the arbitration clause in the original agreement did confer that the seat and jurisdiction at the Courts in Delhi. It is also settled law that the arbitration agreement being a separate agreement can confer a seat and venue even though jurisdiction to that particular Court would not be extended under Section 20 of the Arbitration & Conciliation Act.

6. In the Novated Agreement, Clause 17.2 (c) substituted as under:-

“If a Dispute is referred to arbitration by any Party such Dispute shall be resolved by a single arbitrator appointed jointly by the Parties within thirty (30) days of intimation of Dispute by one Party to another, and



in the event of failure of the Parties to agree on a single arbitrator, line said arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996 or any statutory enactment, or modification or re-enactment thereof for the time being in force (the “Rules”). The arbitrator(s), so appointed must have relevant expertise in the power sector.”

7. It is pertinent to mention that in the Novated Agreement, parties consciously did not put a clause that the seat and venue should be in Delhi.
8. In view of the above, since no part of the cause of action arises within the city of Delhi, this Court is therefore not in a position to accede to the request of entertaining the present petition.
9. It is open for the Petitioner to approach the Court of competent jurisdiction, i.e., the High Court of Telangana of Judicature at Hyderabad or the High Court of Allahabad, Lucknow Bench.
10. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 18, 2024

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