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

+ **ARB.P. 440/2025**

NEO STRUCTO CONSTRUCTION PVT LTDPetitioner

Through: **Mr. Meenal Garg, Advocate**

versus

DOOSAN POWER SYSTEMS INDIA PVT LTDRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

11.03.2025

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I.A. 6161/2025 (Exemption)

Allowed, subject to all just exceptions.

ARB.P. 440/2025

1. The Petitioner has approached this Court under Section 11(6) of the Arbitration & Conciliation Act for appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Contract dated 07.10.2020 for Coal Handling Systems Erection Works of Jawaharpur Super Thermal Power Station Project.
2. The contract contains an arbitration clause. The arbitration clause reads as under:-

“25 DISPUTES AND ARBITRATION

a) All disputes, controversies, or differences, which may arise between the Contractor and the Subcontractor, out of or in relation to or in connection with this Subcontract, or for any breach thereof, shall



be amicably settled by mutual conciliation between the Parties hereto.

b) Should the Parties hereto fail to settle such disputes, controversies, or differences ("Dispute") amicably within thirty (30) days, such Dispute shall be finally settled by arbitration in accordance with the following rule and place, the award of which shall be final binding upon the Parties hereto.

(a) Place : London, United Kingdom

(b) Rule : Commercial Arbitration Rules of the United Kingdom Commercial Arbitration Board (the "Arbitration Rules")

3. The arbitration clause stipulates that the place of arbitration shall be London and the Commercial Arbitration Rules of the United Kingdom Commercial Arbitration Board shall be applicable. It is stated that this was substituted by the Special Terms and Conditions of the Contract which reads as under:-

"25 DISPUTES AND ARBITRATION

*Replace the text of the GTC Sub-Clause 25 b) with:
With reference to the Arbitration Place and Rule the disputes shall be finally settled:*

Place : Delhi, India

Rule : Rules of Arbitration of the Indian Council of Arbitration (the "Arbitration Rules")."

4. It is stated that in terms of the agreement and in view of the disputes which have arisen between the parties, the Petitioner invoked arbitration by requesting the Indian Council for Arbitration for appointing an arbitrator.



5. Rule 15 of the ICA Rules prescribes the procedure for initiation of arbitration. Rule 15 of the ICA Rules reads as under:-

*“Initiation of Arbitration
Rule 15*

(i) Any Party wishing to commence arbitration proceedings under these rules (Claimant) shall give a notice of request for arbitration to the Registrar of ICA and to the Respondent.

(ii) The notice of request (application) for arbitration to the Registrar shall be accompanied by:-

(a) the names and full addresses of the parties to the dispute including emails, phone numbers, hand/mobile phone numbers, fax nos. of the parties to the dispute and their legal representative, if any.

(b) statement of the claim and facts supporting the claim, points at issue and relief or remedies sought with other details of the Claimant's case.

(c) original or duly certified copies of the arbitration agreement, any contract or agreement out of or in connection with which the dispute has arisen and such other documents and information relevant or relied upon.

(d) Non-Refundable Registration Fee of Rs.15,000/- plus any applicable tax for claims up to Rs. Two Crore and Rs. 30,000/- plus any applicable tax for claims more than Rs. Two Crore.

(e) The Arbitral proceedings in respect of dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the Respondent.



(f) In the event that the Claimant fails to comply with any of the requirements referred to herein above, the Registrar may fix a time limit not exceeding 15 days within which the Claimant must comply, failing which the file shall be closed without prejudice to the Claimant's right to resubmit the same claims at a later date in another notice of request for arbitration. ”

6. The Petitioner has issued a notice to the Respondent for initiation of arbitral proceedings with a copy marked to the Indian Council for Arbitration. In the opinion of this Court, this is not the compliance of Rule 15(1) of the ICA Rules.
7. Confronted with this, learned Counsel for the Petitioner seeks permission to withdraw the present petition with liberty to approach the ICA for appointment of an arbitrator.
8. Permission and liberty, as prayed for, is granted.
9. It is made clear that it is always open for the Petitioner to approach this Court by filing a petition under Section 11 of the Arbitration & Conciliation Act if the Indian Council for Arbitration does not act in accordance with the Rules and appoint an arbitrator in the matter.
10. The petition is disposed of as withdrawn along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 11, 2025

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