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

+ **ARB.P. 600/2025**

**STPL HORTICULTURE PRIVATE LIMITED** .....Petitioner

Through: Mr. Bhargavi Kannan, Mr. Abhijeet Swaroop & Ms. Shivani Karmakar, Advs.

versus

**NORTHERN RAILWAYS** .....Respondent

Through: Mr. Saksham Sethi, Adv. for Mr. Vineet Dhanda, CGSC.

**CORAM:**  
**HON'BLE MR. JUSTICE JASMEET SINGH**

% **ORDER**  
**27.05.2025**

1. This is a petition filed under section 11 (6) of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The petitioner and respondent entered into a Power Purchase Agreement dated 25.03.2019, wherein the petitioner had commissioned a Solar Power Plant, which supplied the energy requirements of the respondent.
3. Clause 33 of the said Agreement provides for disputes resolution and the same is extracted below:-



## ARTICLE 33

### DISPUTE RESOLUTION

#### 33.1. Dispute resolution

33.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 33.2.

33.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 33.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Railway Electrical Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Railway Electrical Engineer or without the intervention of the Railway Electrical Engineer, either Party may require such Dispute to be referred to [Insert the designation of the Person authorized in this behalf] and the Chairman of the Board of Directors of the SPD for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Clause 33.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 31.3.

#### 33.3. Arbitration

33.3.1. If the efforts, to resolve all or any of the Disputes through conciliation fail, then such disputes shall be referred to a sole arbitrator if the total value of the claim is up to Rs.[5 million]; and to a panel of three arbitrators if total value of claims is [Railways] than Rs.[5 million]. For this purpose, Railways will make out a panel of engineers with the requisite qualification and professional experience relevant to the field to which the Agreement relates. This panel will be from among serving or retired government employees or of public sector. Railways shall provide a panel of three arbitrators for claims up to Rs.[5 million] and a panel of five arbitrators for claims of Railways than Rs.[5 million]. SPD shall choose the sole arbitrator from the panel of three and/or one arbitrator from the panel of five in case three arbitrators are to be appointed. The Railways shall also choose one arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The arbitrator(s) shall be appointed within a period of [30] days from the date of receipt of written notice/demand of appointment of arbitrator from either Party.

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33.3.2. The venue of such arbitration shall be \_\_\_\_\_. The arbitral award shall be binding on both Parties. The cost of arbitration shall be equally shared by both Parties.

33.3.3. The sole arbitrator or the Arbitral Tribunal shall give his award within [12] months from the date of his entering on the reference or within extended time, as the parties may consent for the same, as the case may be on all the matters referred to him and shall indicate his/their finding, along with sum awarded, separately on each individual item of dispute. In case the matter is referred to arbitral tribunal for adjudication and the views of two arbitrators differs on the issue then view of presiding arbitrator shall prevail. The demand of arbitration shall specify the matters which are in question or subject of the dispute or differences as also the amount of claim item wise, together with counter claims or set off shall be referred to arbitration and other matters shall not be included in the reference. The arbitration proceedings shall be governed by the Indian Arbitration and Conciliation Act, 1996, as amended from time to time including provisions in force at the time the reference is made.

33.3.4. During the dispute resolution period, both the Parties shall continue to perform their respective obligations as per provisions of the Agreement.

33.3.5. This Section is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

#### **33.4. Arbitration**

33.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 33.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 33.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.

33.4.2. There shall be a board of [3 (three)] arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the [2 (two)] arbitrators so selected, and in the event of disagreement between the [2 (two)] arbitrators, the appointment shall be made in accordance with the Rules.

33.4.3. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 33 shall be final and binding on the Parties as from the date it is made, and the SPD and Railways agree and undertake to carry out such Award without delay.

33.4.4. The SPD and Railways agree that an Award may be enforced against the SPD and/or Railways, as the case may be, and their respective assets wherever situated.

33.4.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### **33.5. Adjudication by Regulatory Authority or Commission**

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the SPD and Railways, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 33.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the



Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

4. On 31.08.2022, disputes arose between the parties and the petitioner invoked conciliation process on 13.08.2024. The parties also met, but were unable to arrive at a mutually agreeable solution.
5. Thereafter, the petitioner invoked the arbitration clause vide Legal Notice dated 25.01.2025 and filed the present petition.
6. Mr. Sethi, learned counsel for and on behalf of Mr. Vineet Dhanda, learned CGSC appears for the respondent and states that he has no objection to appointment of an Arbitrator as long as claims and counter-claims are left open.
7. Since the amount in dispute seems to be less, I am inclined to appoint a Sole Arbitrator.
8. For the said reasons, the petition is allowed and the following directions are issued:-
  - i) Mr. Anupam Srivastava, Senior Advocate (Mob. No. 9811032151) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
  - ii) The arbitration will be held under the aegis and rules 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**

**MAY 27, 2025/pk**

[Click here to check corrigendum, if any](#)