



\$~4

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

+ **ARB.P. 2133/2024**

DESEIN PRIVATE LIMITED

.....Petitioner

Through: Mr. Prashant Mehta Mr. Varun
Gupta and Mr. Ronak Gupta,
Advocates.

versus

POWER FINANCE CORPORATION CONSULTING LIMITED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
20.02.2025

%

1. Pursuant to notice, office report notes that respondent has been served.
2. However, no one appears on behalf of respondent.
3. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('A&C Act') seeking appointment of the Sole Arbitrator for the adjudication of disputes between the parties arising out of the under the Letter of Award dated 26th February, 2016 executed between the parties, for "*Consultancy Services for Site Feasibility Study, Acquisition of Land conducting various Technical Studies and Obtaining MoEF/SPCB Clearances etc. for setting up 4000 MW Ultra Mega Power Project based on allocated domestic captive coal blocks and to be set up on Build, Own and Operate (BOO)*" based on contract dated 06th April, 2016.



4. It is stated that the arbitration clause is contained in *Clause 18.2* of the said agreement. The arbitration clause reads as under:

18.2 In the event, the parties are unable to resolve such dispute/difference amicably within ninety (90) days after the same has arisen then the dispute shall be referred to arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and such arbitration shall be conducted in accordance with the rules of ICA. The place of arbitration shall be New Delhi or any other place mutually agreeable by the parties and the language of arbitration shall be English

The Arbitration shall be conducted by panel of 3 Arbitrators, one to be appointed by each party and third Arbitrator to be appointed by two Arbitrators as the Chairman of the Tribunal.

The Parties agree that the arbitrator's decision shall be final and conclusive. The costs of arbitration (including without limitation, those incurred in the appointment of the arbitrators) shall be borne equally by the Parties hereto; however each Party shall pay its respective legal charges. The Award shall be final and binding and non-appeal able. Judgment on the award may be entered and enforced in any court of competent jurisdiction. By execution and delivery of this Agreement, each Party agrees and consents to the jurisdiction of the aforesaid arbitration panel and solely for the purpose of enforcement of an arbitral award, as referred to hereinabove, in any court of competent jurisdiction for itself and in respect of its property and waives in respect of both itself and its property, any defense it may have to or based on sovereign immunity, jurisdiction, improper venue or inconvenient forum.

5. The jurisdiction clause is contained in *Clause 18.2*, conferring jurisdiction upon Delhi Courts.

6. Since, there were disputes between the parties, petitioner invoked arbitration *vide* communication dated 07th October, 2024 where the claim is made amount to Rs. 6,90,22,000/- for the actual work done and additional, there will be other losses and damages which petitioner will claim during arbitration.

7. Counsel for petitioner pointed out that the Arbitration *Clause 18.2* refers to Rules of Arbitration of the Indian Council of Arbitration ('ICA'). However, he states that since the appointment procedure encompassed in the said clause did not provide for the appointment of an umpire by the ICA, in view of the decision of the Supreme Court in *C.M.C. Ltd v. Unit Trust of*



India (2007) 10 SCC 751), the provisions of A & C Act will prevail, and the appointment can be made by this Court. The said decision has also been taken note of by the Coordinate Bench of this Court in **Intech Brinechem Limited v. De Dietrich Process Systems India Pvt. Ltd** 2023:DHC: 2266.

8. In any event, since the petitioner seeks appointment of a Sole Arbitrator, which this Court has appointed, it would be in the fitness of things that the Rules of ICA may not be relevant anymore. The arbitration may be conducted under the aegis of the DIAC rules.

9. It is stated that despite petitioner's request, the respondents did not consent to appointment of the Sole Arbitrator, as per the aforementioned Clause.

10. The Supreme Court in **Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.**(2012) 10 SCC 752 and **Suprema Inc. v. 4G Identity Solutions (P) Ltd.** (2015) 13 SCC 122, and this Court in, **Energy Efficient Services Ltd. v. Merry Gold Enterprises** 2023 SCC OnLine Del 2365 and **Aditya Birla Finance Ltd. v. Anjali Nag** 2024 SCC OnLine Del 2568, in similar situations, where the respondents did not appear before the Courts despite issuance of notice and service being affected upon them , proceeded *ex-parte* against such respondents and appointed the arbitrator.

11. Upon a conspectus of the averments contained in the petition and the submissions made, this Court is of the opinion that there is a valid and subsisting arbitration agreement between the parties, within the territorial jurisdiction of this Court, the disputes stated to have arisen between the parties do not appear *ex facie* to be non-arbitrable.

12. Considering the aforesaid, the petition is allowed. The following directions are issued:



- i) **Justice V.K. Jain (Retd.)** (Mobile No. 9650116555) is appointed as the Sole Arbitrator. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (“**DIAC**”). The arbitration proceedings shall be conducted under the Rules of the DIAC.
 - ii) The fee of the Sole Arbitrator shall be as per the Fourth Schedule of the A&C Act, as amended by the DIAC Rules.
 - iii) List before the DIAC on 25th February 2025. Let a copy of the present order be emailed to Secretary, DIAC, on the email id: delhiarbitrationcentre@gmail.com.
 - iv) Copy of this order be communicated by the Registry to the Respondent through email.
 - v) Parties to appear before the DIAC, which shall also issue notice to the counsel for the respondent once again.
13. The petition is disposed of.
14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 20, 2025/RK/tk