

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB-41-2018 (O&M)
Date of decision:- 15.03.2019

M/s OMC Power Pvt. Ltd.

...Applicant

Versus

M/s Vertiv Energy Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE

Present:- Mr. Ravi S.S. Chauhan, Advocate, for the applicant.
Mr. Mohit Nehra, Advocate, for the respondent.

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KRISHNA MURARI, CHIEF JUSTICE (ORAL)

This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

2. Admittedly there is an agreement between the parties, clause 32 whereof contains an arbitration clause. It may be relevant to extract clause 32 of the agreement which reads as under:-

“ARBITRATION

32 (a) Where a dispute arises under or in relation to this agreement, the parties shall make all reasonable efforts to resolve the dispute through good faith negotiations. If efforts to amicably resolve any disputes or claims between the parties are unsuccessful, then such dispute or claim arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and resolved by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitral proceeding and the award shall be final and binding on all parties.

(b) In the event a dispute arising out of or in connection with this agreement has failed to be resolved amicably, or within seven (7) days of receipt of a notice by a party confirming that efforts to amicably resolve any dispute has been unsuccessful and seeking to initiate arbitration ("Arbitration Notice"), the arbitration tribunal shall consist of three arbitrators. The parties shall appoint an arbitrator each and the two arbitrators shall mutually appoint a third arbitrator. The venue of arbitration will be New Delhi to which the Supplier shall have no objection and shall have deemed to have accepted such venue and all proceedings will be conducted in English. Either party shall be responsible for their legal expenses and costs.

(c) On failure of either of the parties to adhere to the proceedings before the arbitrator, the arbitrator shall have the right to proceed ex-parte. All communications between the arbitrator and a party shall be forwarded to the other party simultaneous to its communication to the arbitrator.

(d) The parties agree that they shall maintain confidentially of any and all issues that are subject matter of arbitration in public statements issued by such party either prior to or during and after arbitration unless required by law."

3. Dispute arose between the parties and the applicant issued a legal notice dated 21.04.2017 invoking clause 32 of the agreement seeking arbitration of the disputes. In accordance with the terms of the agreement the applicant nominated Air Commodore Shachindra Singh Motial (Retd.) having his office at E-128, Richmond Park, DLF Phase-IV Gurgaon, as his nominee arbitrator. It is alleged that though the respondent admitted the dispute between the parties but deviated from the agreed procedure and sought reference of the disputes to the arbitration through Delhi International Arbitration Centre. However, the applicant vide letter dated 23.05.2017 did not agree to the aforesaid proposal and gave three days notice to the respondent to nominate his arbitrator. When the respondent failed to nominate his arbitrator, the jurisdiction of this Court has been invoked.

4. In response to the notice the respondent has put in appearance.
5. Learned counsel for the respondent does not dispute any of the fact rather states that an arbitrator be nominated by this Court on his behalf. The applicant has already nominated Air Commodore Shachindra Singh Motial (Retd.) as its arbitrator. In so far as the respondent is concerned, I hereby appoint Mr. Justice Tarun Agarwala, a former Chief Justice of the Meghalaya High Court (Mobile No. 9415307976 & 7705007976), as the arbitrator on behalf of the respondent. The two arbitrators may appoint the Presiding Arbitrator. The fees of the arbitral tribunal so constituted shall be as may be settled by the parties with the arbitral tribunal.
6. The application stands disposed of.

(KRISHNA MURARI)
CHIEF JUSTICE

15.03.2019
Amodh/ravinder

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No