

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 07.12.2010

% Judgment delivered on: 07.01.2011

+ Arb.P.24/2010 & I.A.13666/2010

INDIAN POTASH LIMITED Petitioner
Through: Mr. Vivek Singh, Advocate

versus

BOHRA INDUSTRIES LTD. Respondent
Through: Mr. Guru Krishna Kumar,
Mr.Pancham Surana and Ms.Pooja
Priyadarshini, Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | : | No |
| 2. | To be referred to Reporter or not? | : | Yes |
| 3. | Whether the judgment should be reported in the Digest? | : | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. This petition has been preferred under Section 11 of the Arbitration and Conciliation Act, 1996 (for short `the Act) to seek the appointment of an independent and impartial arbitrator to adjudicate the disputes and differences which have arisen between the parties under, and in relation to, the Memorandum of Understanding (MOU)

executed between them on 10.09.2008. I may note that the existence of the said MOU; the arbitration agreement contained therein; the factum of existence of live disputes between the parties, is not in question. The matter has, however, been argued at considerable length, primarily on the issue whether the petitioner had the locus standi to file this petition under Section 11 of the Act (as the notice invoking the arbitration agreement dated 31.12.2009 was sent by the respondent and not the petitioner) and on the issue that this petition was filed prematurely.

2. I consider it appropriate to first note the submissions of the respondent. The submission of learned counsel for the respondent, firstly is that it is only that party, who invokes the arbitration agreement by serving a notice on the opposite party, who is entitled to file a petition under Section 11 of the Act. The recipient of the notice cannot do so, by relying upon the notice of invocation of the arbitration agreement issued by the opposite party. The second submission is that the period of 30 days (from the date of issuance of the notice of invocation of arbitration agreement) had not expired when the present petition was filed. It is urged that this petition was premature when filed. Even if the petitioner did not agree to the name of the proposed arbitrator as suggested by the respondent, the petitioner ought to have made a suggestion of its own, to which the respondent might

have agreed. The petitioner, according to the respondent, could not have prematurely approached this Court by filing the present petition.

3. Another submission of learned counsel for the respondent is that the petitioner has not filed the original arbitration agreement between the parties, and for this reason also this petition is not maintainable.

4. The respondent also disputes the territorial jurisdiction of this Court to entertain the present petition on the ground that no part of cause of action has arisen within the jurisdiction of this Court, and that the respondent is also not situated within the jurisdiction of this Court. In this regard, reliance has been placed by learned counsel for the respondent on **Larsen & Toubro Ltd. v. K.S. Baidwan & Ors.**, 2005 (3) R.A.J. 103 (Del). A preliminary objection to the territorial jurisdiction of this court to entertain a petition under Section 34 of the Act was raised by the respondent. This was a case where the agreement of the parties, inter alia, specifically provided: all payments by the employer shall be made only at Ghaziabad; all disputes arising out of or in any way connected with the agreement, shall be deemed to have arisen at Ghaziabad, and; only courts at Ghaziabad shall have jurisdiction to determine the same.

5. On the other hand, learned counsel for the petitioner has rebutted all the aforesaid submissions of the respondent. As I am inclined to accept the submissions made by learned counsel for the

petitioner, I am not recording them separately, and shall refer to them in the course of my discussion.

Discussion

Re: Jurisdiction

6. It appears that the parties, from time to time, successively entered into similar memoranda of understanding whereunder the respondent agreed to make supplies of certain chemicals to the petitioner for being marketed by the petitioner in various States. The supplies had to be made in the State of Rajasthan. These memoranda of understanding, except the last one, were all executed in Rajasthan. The parties lastly entered into the aforesaid MOU on 10.09.2008, effective from 01.05.2008, at New Delhi. This is so specifically stated in the MOU itself. It is this MOU dated 10.09.2008 (which was entered into at Delhi), which forms the basis of this petition.

7. The exercise of jurisdiction by me under Section 11 of the Act is as a designate of the Chief Justice of this Court. The expression "Court" is defined in Section 2(e) to mean the principal civil court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit. The power under Section 11(5) is exercised by the Chief Justice. The expression "Chief Justice" would

obviously mean the Chief Justice of a High Court. i.e. the High Court which would have had jurisdiction to entertain a suit, if filed on the same subject matter. In relation to High Courts which do not exercise original civil jurisdiction, the High Court would be the one, within whose territorial jurisdiction the principal civil court of original jurisdiction in a district before whom the suit could have been filed, but for the arbitration agreement, is situate.

8. The decision in **Larsen & Toubro Ltd.** (supra), in my view has no application in the facts of this case, firstly, for the reason that it pertains to the Arbitration Act, 1940 and not to the present Act; secondly, for the reason that in the facts of that case the agreement specifically provided that the courts in Ghaziabad would have exclusive jurisdiction; and thirdly, because the MOU in question was admittedly executed at New Delhi. It is well settled that part of cause of action arises at the place of execution of an agreement. It is the implementation of the said MOU, which is the subject matter of dispute between the parties. The questions forming subject matter of arbitration in the present case are various questions arising under the MOU in question, as executed at New Delhi. Therefore, this Court has the territorial jurisdiction to entertain the present petition and the objection to my jurisdiction on the ground that no part of cause of action has arisen within the jurisdiction of the Delhi High Court, is

rejected, as a part of the cause of action has indeed arisen within the jurisdiction of this Court.

Re: Original Arbitration Agreement not being filed

9. The submission of learned counsel for the respondent that the original arbitration agreement has not been filed by the petitioner is meritless. Under section 11 of the Act, there is no specific requirement that, while making an application under the said section before the Chief Justice, the applicant should produce the original arbitration agreement. The requirement under section 8(2) of the Act, which requires the applicant to produce the original arbitration agreement or a duly certified copy thereof, for reference of the parties to arbitration, cannot be imported into section 11 of the Act. If the Parliament had so desired, it could have made a similar provision as contained in section 8(2) of the Act, in section 11 as well. However, there is a conscious departure made by the Parliament in this respect in section 11. The petitioner has filed, along with the petition, a true copy of the arbitration agreement as contained in the MOU dated 10.09.2008. There is sufficient compliance of the provisions of the Act and the Scheme framed by this Court under section 11(10) of the Act. Under clause 2(i)(a) of the Scheme framed by the Delhi High Court, called the Scheme of Appointment of Arbitrators, 1996, the only requirement is that the request made under sub-section (4) or sub-section (5) or sub-section (6) of section 11 shall be made in writing in the prescribed form

and shall be accompanied by “*the original arbitration agreement or true copy thereof*”. Therefore, the filing of a true copy of the agreement is sufficient compliance by the applicant. Moreover, the respondent has itself filed a copy of the same MOU and it is not even disputed by the respondent that the copy of the MOU filed by the petitioner, which contains the arbitration agreement, is not a correct copy. Consequently, this submission of learned counsel for the respondent is meritless and is rejected.

Re: The Locus Standi of the petitioner to prefer this petition and the petition being premature.

10. The respondent issued a notice dated 31.12.2009 by registered A.D post to the petitioner stating that disputes and differences have arisen between the parties and it has not been possible to amicably resolve them. The respondent invoked the arbitration agreement contained in the MOU dated 10.09.2008 and conveyed its intention to appoint Shri Sunder Lal Mehta (retd.) District and Sessions Judge residing at Udaipur as the Sole Arbitrator to adjudicate and decide all differences and disputes between the parties. I may note that the arbitration agreement between the parties is contained in Clause 12 of the MOU dated 10.09.2008, which reads as follows:-

“12. Both the parties agree that differences or disputes if any shall be amicably resolved through mutual discussions and in case it cannot be resolved then it shall be referred to arbitration as per Indian Arbitration and Reconciliation Act, 1996.”

11. Therefore, the so-called appointment of Shri Sunder Lal Mehta, as communicated by the respondent in its notice dated 31.12.2009, could at best be construed as a proposal by the respondent, as the power to appoint the arbitrator did not vest exclusively in the respondent.

12. In fact, the arbitration agreement does not prescribe any procedure for appointment of the arbitrator. Upon receipt of the said communication, the petitioner, vide communication dated 18.01.2010, rejected the unilateral appointment of Shri Sunder Lal Mehta as the arbitrator. The petitioner further stated that it shall be moving this Court for appointment of an arbitrator. The petitioner then preferred this petition, initially filed before the Court on 21.01.2010.

13. The respondent has also filed a petition under Section 11 of the Act before the Rajasthan High Court, being S.B.Arb.No.12/2010. It is not disputed that the said petition has been filed after the present petition had been filed before this Court. According to the petitioner, the respondent has preferred the aforesaid petition only on or about 29th January, 2010.

14. As it is not disputed that the present petition was preferred prior in point of time, mere pendency of the subsequent application filed by the respondent before the Hon'ble Rajasthan High Court is no reason

for me not to entertain the present petition. I may refer to Section 11 (11) of the Act in this regard, which states:

"Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request."

15. The submission of learned counsel for the respondent is that the petitioner is the "recalcitrant" party inasmuch, as, the arbitration agreement was not invoked by the petitioner. He submits that such a party cannot take advantage of the invocation of the arbitration agreement by the opposite party. In support of his submission, learned counsel for the respondent has placed reliance on ***Able Associates & Anr. v. K.S. Ramakrishna Rao***, 2007 (4) Arb. L.R. 219 (A.P). The learned Single Judge of the Andhra Pradesh High Court in this decision has held that only when the parties fail to agree on an arbitrator within thirty days from the receipt of a request by one party from the other to so agree, the Chief Justice would have jurisdiction under section 11(5) of the Act to appoint an arbitrator. He further held that failure to agree on an arbitrator would only arise after: – (i) one party to the agreement makes a request to the other; and (ii) thirty days have elapsed from the date when the request was made. He further held that jurisdiction of the Chief Justice can be invoked only on compliance of these prerequisites and they cannot be dispensed with.

Strict adherence to the conditions prescribed under section 11(5) of the Act is essential. He further holds that, as a general rule, statutes which enable a person to take legal proceedings under specified circumstances must be strictly obeyed.

16. The Andhra Pradesh High Court also held in para 21 of its decision that compliance with the requirement of putting the other party to notice and waiting for thirty days before invoking jurisdiction of the Chief Justice has a salutary purpose. Merely because the Chief Justice or his designate would give notice of the petition to the opposite party once the application under section 11(5) is filed, is no ground to dispense with the requirement of the service of notice of invocation of the arbitration agreement. The Court, consequently, dismissed the petition preferred by the petitioner on the ground that no notice of invocation of the arbitration agreement had been given in the facts of that case.

17. I may note that in the case before the Andhra Pradesh High Court, the arbitration agreement had not been specifically invoked by either of the parties. It was not that the arbitration agreement had been invoked by one of the parties, and the parties had not concurred in the appointment of an arbitrator mutually. It was the submission of the petitioner that the arbitration application made before the court could itself be treated as a notice/request for appointment of an arbitrator. This submission of the petitioner has been rejected. The

observations made by the court are, therefore, to be understood in this factual background.

18. The language used in section 8(2) of the Arbitration Act, 1940 is materially different from that used by the Parliament in section 11(5) of the Act. Section 8(2) of the 1940 Act specifically uses the words “... .. the Court may **on the application of the party who gave the notice**” (emphasis supplied). However, the words used in section 11(5) are “... .. if the parties fail to agree on the arbitrator within thirty days from the receipt of request by one party from the other party to so agree, the appointment shall be made upon request of **a party**, by the Chief Justice or any person or institution designated by him” (emphasis supplied).

Therefore, there is a clear departure from the scheme legislated under section 8 of the Arbitration Act, 1940, when the Parliament legislated section 11 of the Act. The plain grammatical reading of Section 11(5) of the Act would be that either party can invoke the jurisdiction of the Chief Justice of the High Court, after the arbitration agreement has been invoked (by whichever party) and the parties fail to agree on the arbitrator. There is no reason to discard the plain grammatical meaning and to interpret the expression “a party” to mean the party who has made the request to the other party to agree on an arbitrator.

19. Reliance has also been placed by the respondent in the decision of the Supreme Court in **Dattar Switchgears Ltd. v. Tata Finance Ltd. & Anr**, (2000) 8 SCC 151. In paragraph 6 of the said decision, the Supreme Court observed that *“Sub-section (5) of section 11 can be invoked by a party who has requested the other party to appoint an arbitrator and the latter fails to make any appointment within thirty days from the receipt of the notice.”*
20. The submission founded upon **Dattar Switchgears** (supra) is misplaced. The single sentence relied upon by the respondent cannot be said to be the ratio of that decision. The issue in that case was not the one raised by the respondent in the present case.
21. Similarly, reliance placed on **Geophysical Institute of Israel v. Geoenpro Petroleum Ltd.**, 2009 (14) Scale 539, is also misplaced. This case has been cited only as an instance to show that in the facts of that case, the petitioner served a notice of invocation of arbitration and the respondent did not agree to the person nominated by the petitioner as the arbitrator, and instead nominated its own arbitrator. The said nomination was not accepted by the petitioner, and thereafter the petitioner filed a petition to seek the appointment of an arbitrator. The issue raised by the respondent did not arise before the Supreme Court in that case, and therefore, had not been considered by the Supreme Court.

22. Learned counsel for the petitioner, on the other hand, places reliance on the decision of this Court in **Haldiram Manufacturing Co. Ltd. v. SRF International**, 139 (2007) DLT 142. In this case, the petitioner had initially filed an application under section 8 of the Arbitration and Conciliation Act. The respondent raised an objection to the maintainability of the petition on the ground that section 8 of the Act would apply only in respect of a matter pending before a court. Consequently, the petitioner moved an application to seek amendment of the petition, whereby the nomenclature of the petition was sought to be changed from one under section 8 to one under section 11 of the Act. The amendment application was allowed.

23. In **Haldiram** (supra), admittedly, no notice had been given by the petitioner to invoke the arbitration agreement between the parties. The petitioner had sent a letter dated 16.09.1998 to the respondent setting out the history of the dispute and calling upon the respondent to make payment. However, the arbitration agreement was not invoked. The objection of the respondent was recorded by the court in para 12 of the judgment, which reads as follows:

“12. The basic defense of the respondent is that if the said clause of arbitration applies, the petition under Section 11 of the said Act could be filed only after there is invocation of arbitration and failure of the respondent to agree to the appointment of an arbitrator in terms of the arbitration clause. In the present case the arbitration envisaged is of a sole arbitrator. It is only on the failure of the other party to agree to the appointment of an

arbitrator that a cause arises for the Court to exercise jurisdiction under Section 11(5) of the said Act.”

24. After considering the various decisions cited before it, including the case of **M/s. Greenland Foods Pvt. Ltd. v. Union of India**, AIR 1973 Del 157, (wherein it had been held in the context of a suit under section 20 of the Arbitration Act, 1940 that the same can be treated as a notice for appointment of an arbitrator), and also the decision in **Anand Kumar Jain v. Union of India**, 1984 RLR 438, (wherein it was held that even if there was no formal demand made, the filing of an application under section 20 of the 1940 Act amounts to a demand), this Court held as follows:

“26. On a conspectus of the aforesaid judgments on the question of requirement of a prior notice to invoke the jurisdiction under Section 11 of the said Act, there is no manner of doubt that the procedure prescribed under the said Section has to be followed. Sub-section (5) of Section 11 of the said Act provides for the procedure as per the arbitration clause. Thus, wherever the arbitration clause prescribes the mode and manner of invocation of arbitration, it is that procedure alone which must be followed and till such a procedure is followed, there can be no question of invocation of the jurisdiction of the Chief Justice of the High Court under Section 11 of the said Act. The moot point is whether there is any such procedure envisaged under the present arbitration agreement. The various judgments referred to clearly had arbitration clauses where either one party had to call upon the other party or had to nominate its own arbitrator or a designated authority had to appoint an arbitrator. The arbitration clause in the present case only states that the reference has to be to a sole arbitrator. The sole arbitrator has to be mutually nominated by the parties. There was no such mutual nomination. There is no specific procedure prescribed under the arbitration clause. In the absence of any procedure, it cannot be said that there is violation of

the pre-requisite before Section 11 of the said Act can be invoked.

27. There is no doubt that if the petitioner had at least called upon the respondent to appoint an arbitrator, this difficulty would not have arisen but the line of judgments starting from M/s Greenland Foods Pvt. Ltd. (supra), Anand Kumar Jain (supra) and finally in G. Premjee Trading Pvt. Limited (supra) held that once the arbitration clause does not indicate as to who would be the arbitrator and no specific procedure is prescribed, the Court should have the power to appoint an arbitrator. In view thereof, it cannot be said that this Court is devoid in the facts of the present case to appoint an arbitrator.” (emphasis supplied)

Learned counsel for the respondent has relied upon the decision of the Calcutta High Court in AP No. 43 of 2010 Deepak Gidra V. Dr. PB's Health and Glow Clinic P. Ltd. In this case, the Calcutta High Court has disagreed with the view taken by this Court in **Haldiram** (supra). However, I am bound by the decision of a coordinate bench of this court and, even otherwise, I respectfully agree with that view.

25. In **Yogesh Kumar Gupta v. Anuradha Rangarajan**, 139 (2007) DLT 71, I have held as follows:

“23. The purpose of requiring the parties to first make an attempt to appoint a mutually agreeable sole arbitrator within a period of 30 days is to prevent the unnecessary rush by one of the parties to the Chief Justice or the person or institution designated by him to seek appointment of an arbitrator. The object is to prevent the unnecessary burdening of the Court's docket and also to save the unnecessary expense of time and money to the parties. This procedure provides an opportunity to the parties to mutually appoint an arbitrator. It is only upon their failure to mutually agree for appointment of a sole arbitrator within a period of 30 days that one of the parties may move the Chief Justice for appointment of a sole arbitrator.

24.

25. *In my view, in a case like the present, where the petitioner had already made a request for appointment of the sole arbitrator with mutual consent, to which there had been no response from the respondent it was not necessary for the petitioner to have once again undergone the formality of issuing a fresh notice seeking consent of the respondent for appointment of a mutually acceptable sole arbitrator. The respondent had made its intention (of not agreeing to mutually appoint an arbitrator) known, by not responding to the notice dated 10.4.2002 and the subsequent reminders thereto. No useful purpose would have been served by issuance of a fresh notice to the respondent. Such a strict interpretation to Section 11(5) of the Act, in the facts of this case, would not even be in consonance with the object and purpose of the Act, which is to have expeditious disposal of disputes between the parties to the Arbitration Agreement. Strict adherence to the said provision would only entail avoidable delays.*

26. *One cannot also loose sight of the fact that while exercising jurisdiction under Section 11(5) of the Act, all that the Court is doing is to appoint an Arbitrator. This is done after issuance of notice to the opposite parties and hearing them and after being satisfied that an arbitration agreement exists apart from a live claim that is referable to arbitration. Nothing prevents a respondent who is served with a notice issued by a Court under Section 11(5) of the Act, to even thereafter agree to a mutually agreeable arbitrator being appointed while the application is still pending in Court. In this case, the purpose of serving notice under Section 11(5) of the Act, namely, to give an opportunity to both the parties to concur in the appointment of a mutually acceptable arbitrator to resolve their disputes, had been achieved. However, the same had not borne any fruit. There was no necessity to once again trigger the same mechanism after the parties had exchanged correspondence between October and December 2002. In the facts of this case, the ratio of Utkal Commercial Corporation (supra) cannot be applied.*

27. *After all, what can be the possible grievance of a respondent who is made to respond to a petition for seeking appointment of a sole arbitrator under Section 11(5) of the Act, when admittedly there is an arbitration agreement and a live arbitrable claim?*

28. *As I see, the possible objection could be that the petitioner had not served a notice requiring appointment of an*

arbitrator by mutual consent and that, if that procedure had been adopted there may not have been the need to move the Court. But such a defense or grievance cannot be raised by a respondent who has already demonstrated his intention not to appoint of an arbitrator by mutual consent by ignoring the request made by the petitioner.”

26. In the light of these decisions, the judgment of the learned Single Judge of the Andhra Pradesh High Court in **Able Associates & Anr.** (supra), which has only persuasive force on this Court, cannot be accepted, and I am bound by the view taken by a coordinate bench of this court in **Haldiram** (supra), and my own view in **Yogesh Kumar Gupta** (supra).

27. The mere pendency of a Special Leave Petition in the case of **Haldiram** (supra) as pointed out by the respondent is neither here nor there, as the said judgment has not been stayed. In any event, I do not have to go as far as the Court went in **Haldiram** (supra), as in the present case, the arbitration agreement had been invoked by one of the parties, and the disagreement of the parties had surfaced with the issuance of the reply of the petitioner. That, to my mind was sufficient to enable either party to invoke the jurisdiction of the Chief Justice under section 11 of the Act.

28. Learned counsel for the petitioner has placed reliance on **HBHL-VKS (JV) v. Union of India**, 2007 (1) Arb. LR 252 (Del) (FB). The observations made by the Full Bench in this decision contained in para 4 reads as follows:

“4. Where the parties fail to act in accordance with the prescribed procedure despite notice, any party is free to request the Chief Justice or any person or institution designated by him for appointment of an arbitrator in terms of Sections 11(4) and 11(5) of the Act”

29. I may note that the aforesaid observations made by the Full Bench cannot be said to be the ratio of that decision. The observations have to be understood in the context of the arbitration agreement, which came for consideration before the Court. Under that agreement, the power to appoint or nominate the arbitrator vested in one of the parties. However, in the present case, the appointment of the arbitrator had to be done mutually and there was no procedure prescribed for that purpose.

30. The submission of learned counsel for the respondent that the present petition has been filed prematurely, i.e. even before the expiry of period of thirty days from the date of invocation of the arbitration agreement has no merit. Upon the invocation of the arbitration agreement by the respondent, the petitioner expressly rejected the arbitrator sought to be nominated by the respondent. Consequently, the disagreement between the parties with regard to the name and identity of the arbitrator arose upon the petitioner sending its response dated 18.01.2010. It was not obligated on the part of the petitioner to have, on its own, proposed the name of any other person to act as an arbitrator. Once the disagreement on the proposed name had

surfaced, either party could have moved the Chief Justice or his designate for appointment of the arbitrator.

31. Section 11(5) provides that if parties fail to agree on the arbitrator within thirty days from the receipt of a request by one party from the other side to so agree, the appointment shall be made by the Chief Justice or any person or institution designated by him. It does not mean that even in a case where the disagreement to appoint an arbitrator surfaces even before the expiry period of thirty days, the parties are precluded from moving the Chief Justice before the expiry of the said period of thirty days. Once it becomes clear that the parties cannot agree to the nomination of an arbitrator mutually, the parties are not obliged to wait for the expiry of the period of thirty days, and can move the Chief Justice or his designate at any time thereafter. The interpretation sought to be advanced by the respondent that the parties are obliged to wait for the expiry of the period thirty days prior to moving a petition under section 11 of the Act, even when it is clear that they cannot agree on the identity of the arbitrator mutually, would go contrary to the whole purpose and object of the Act which is to expedite the arbitration proceedings.

32. In the light of the aforesaid decision, I am of the view that the present petition is maintainable at the behest of the petitioner, and cannot be said to be premature. On a bare reading of section 11(5) of the Act, it is clear that once the arbitration agreement has been

invoked, in case the parties did not agree upon the request of “a party”, which means either party, the Chief Justice or the person or institution designated by him can proceed to appoint the arbitrator. There is no reason to limit the meaning of the expression “a party” to mean the party which has invoked the arbitration agreement. As held by this Court in **Haldiram** (supra), it is not even necessary to issue a notice of invocation prior to the filing of a petition under section 11 of the Act, and the notice on the said petition itself is sufficient to constitute a notice of invocation of the arbitration agreement.

33. I, therefore, allow this petition and appoint Mr. Justice Mukul Mudgal, retired Chief Justice, Punjab & Haryana High Court, as the sole arbitrator. The learned arbitrator shall adjudicate upon all the claims and counter claims of the parties. The fee of the learned arbitrator shall be paid in accordance with the schedule of fees prescribed under the Delhi High Court Arbitration Centre Rules. A copy of this order be communicated to the learned arbitrator.

34. The learned arbitrator is requested to proceed to decide the reference at its earliest convenience, and preferably within six months from the date of entering upon the reference.

Petition stands disposed of.

(VIPIN SANGHI)
JUDGE

JANUARY 07, 2011
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