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

+ **ARB.P. 260/2011**

MCML SYSTEMS PRIVATE LIMITED Petitioner

Through: Ms.Lakshmi and Mr.Ashok Kr. Juneja, Advs

versus

UNION OF INDIA & ORS Respondent

Through: Mr.Neeraj Atri and Mr.Vineet Atri, Advs.

+ **O.M.P. 561/2011**

M/S MCML SYSTEMS PRIVATE LTD Petitioner

Through: Ms.Lakshmi and Mr.Ashok Kr. Juneja, Advs

versus

UNION OF INDIA AND ORS Respondent

Through: Mr.Neeraj Atri and Mr.Vineet Atri, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

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25.11.2011

1. Petitioner has filed Arbitration Petition No.260/2011 under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an arbitrator, and has also filed an O.M.P. No.561/2011 under Section 9 of the Arbitration & Conciliation Act, 1996, seeking interim relief.
2. By order dated 01.08.2011 respondents No.1 to 3 were restrained from invoking bank guarantees bearing

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No.UTIB/YEL/BG.No.094010000 0124 for an amount of Rs.9,18,440/- and UTIB/YEL/BG.No.0940100000126 for an amount of Rs.1,00,000/-.

3. Counsel for the respondents submits that the department is in the process of appointing an arbitrator. Counsel for the petitioner relies upon the judgment of the Supreme Court in Bharat Sanchar Nigam Limited & Anr. Vs. Dhanurdhar Champatiray (2010) 1 SC 673, in support of her contention that respondents have lost their right to appoint the Arbitrator, as the Arbitrator was not appointed despite the notice, nor before notice was issued in the matter. Para 7 of the judgment reads as under:

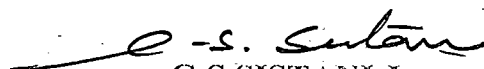
“7. A plain reading of Section 11(5) of the Act would show that if one party demands appointment of an arbitrator and the other party does not appoint any arbitrator within thirty days of such demand, the right to appointment at the instance of one of the parties does not get automatically forfeited. If the appellant makes an appointment even after thirty days of demand but the first party has not moved the Court under Section 11, that action on the part of the appellant would be sufficient. In other words, in cases arising under Section 11(6), if the respondent has not made an appointment within thirty days of demand, right to make an appointment of an arbitrator is not forfeited but continues, but such appointment shall be made before the other party files the application under Section 11 seeking appointment of an arbitrator before the High Court. It is only then the right of the respondent ceases.”

4. I have heard counsel for the parties. Admittedly, legal notice was issued by the petitioner to the respondent, calling upon the respondent to appoint an arbitrator. Thereafter the present petition was filed in which notice was issued on 30.09.2011 and till date

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respondent has not appointed arbitrator. In view of the law laid down by the Apex Court, the respondent has lost its right for appointment of an arbitrator.

5. It is agreed that a former Judge of this court may be appointed as an arbitrator to resolve all disputes and differences, claims and counter-claims between the parties.
6. Accordingly, Mr. Justice B.A. Khan, a former Judge of this Court (Cell No.9818000150), is appointed as a Sole Arbitrator to adjudicate upon all disputes and differences including claims and counter claims arising between the parties. Fee of the Arbitrator shall be borne by the parties equally as per the schedule maintained by Delhi High Court Arbitration Centre. As agreed the interim order will continue till the Arbitrator enters upon reference. The Arbitrator will consider the application of the petitioner under Section 17 of the Arbitration & Conciliation Act, 1996 for interim relief. It will be open for the arbitrator to decide the question of interim relief after hearing both the parties. Till the application for interim relief is decided, interim order shall continue.
7. The Arbitrator shall give prior notice to the parties before commencing the proceedings.
8. In view of above, both the petitions [ARB.P. 260/2011 & O.M.P. 561/2011] stand disposed of. Let a copy of this order be sent directly to learned Arbitrator.


G.S.SISTANI, J

NOVEMBER 25, 2011 ssn

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