

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

Judgment reserved on January 13, 2015

Judgment delivered on January 19, 2015

+ **ARB. P. 11/2015**

M/S. LANCO INFRATECH LIMITED Petitioner
Through: Mr.Sandeep Sethi, Sr. Advocate
with Mr.Dhruv Madan, Advocate

versus

M/S. HINDUSTAN CONSTRUCTION COMPANY LIMITED
..... Respondent
Through: Mr.Rajiv Nayar, Sr.Advocate with
Mr.Ananya Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO
V.KAMESWAR RAO, J.

1. In this petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 ('Act' in short), the petitioner has sought the following reliefs:-

*“(i) Allow the present application and confirm the appointment of Hon’ble Mr. Justice R.C. Chopra (Retd.), Ld. Arbitrator on behalf of the petitioner to resolve the disputes between the parties; and/or
(ii) Pass a direction for appointment of a Presiding Arbitrator to preside over the Arbitral Tribunal; and
(iii) Pass a direction cancelling the appointment of Shri Amiya Kumar Mohanty, FIE by the Institute of Engineers (India) as the nominated arbitrator on behalf of the petitioner company;
(iv) Pass such other or further order(s) as this Court deems fit and proper in the facts of the present case.”*

Facts:

2. It is the case of the petitioner that it had entered into an agreement with the respondent for civil works of power house, transformers and butterfly valve caverns and switchyard of Teesta-VI Hydroelectric Project, Sikkim and other contract for civil works for various tunnels viz. main access tunnels, ventilation tunnels, escape tunnels, bus duct tunnels, pressure tunnels, tail race tunnels and twin head race tunnels from R.D 10370 upto junction with the bottom of surge tunnels including aid tunnels near Subinkhore of Teesta VI, Hydroelectric Project both dated 25.06.2008. The contract agreement under clause 67 stipulated a procedure that need to be followed in the event of disputes and differences that arise between the parties. Sub Clause 67.3 reads as under:-

“Any dispute in respect of which the client and the contractor have failed to reach at an amicable settlement pursuant to sub-clause 67.1, shall be finally settled by arbitration as set forth below. The arbitral tribunal shall have full power to open-up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer.

(1) A dispute with an Indian contractor shall be finally settled by arbitration in accordance with the Indian arbitration & conciliation act, 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the client and the contractor. The third arbitrator shall be chosen by the two arbitrators so appointed by the Parties and shall act as presiding arbitrator. In case of failure of the

two arbitrators, appointed by the parties to reach upon arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the president of institution of engineers (India). For the purposes of this sub-clause, the term "Indian contractor" means a contractor who is registered in India and is a juristic person created under Indian law as well as a joint venture between such a contractor and foreign contractor.

(2) Arbitration may be commenced prior to or after completion of the works, provided that the obligations of the client, the engineer, and the contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

(3) If one of the parties fail to appoint its arbitrator in pursuance of sub-clause (1) above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the president of institution of engineers (India), shall appoint the arbitrator. A certified copy of the order of the president of institution of engineers (India), making such a appointment shall be furnished to each of the parties.

(4) Arbitration proceedings shall be held at New Delhi, India, and the language of the arbitration proceeding and that of all documents and communications between the parties shall be English.

(5) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of arbitration shall be borne in such a manner as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or in its behalf shall be borne by each party itself."

3. That in the month of May, 2014, disputes and differences arose between the parties and as per clause 67.1 to resolve the disputes and

reach an amicable settlement, several meetings were held from May, 2014 till October, 2014. However, the parties failed to arrive at an amicable settlement for resolution of disputes. As the parties failed to resolve the disputes, the respondent vide its letter dated 18.11.2014 invoked the arbitration clause for settlement of the alleged disputes in terms of clause 67.3 and appointed Mr.R.G. Kulkarni as its nominee arbitrator and requested the petitioner to appoint an arbitrator on its behalf within 30 days. Suffice to state, the said letter was received by the petitioner on 20.11.2014. In response to said letter, the petitioner identified and tried to contact a Retired Hon'ble Judge of this Court to take his consent to become an arbitrator on its behalf. Since the petitioner could not able to contact the Retired Hon'ble Judge, the petitioner vide its letter dated 17.12.2014 informed the respondent that the petitioner is in the process of finalizing its nominee arbitrator and may take more time than stipulated in the terms and conditions of the agreement. The petitioner's case is, immediately on receipt of consent from the Retired Hon'ble Judge, the petitioner informed the respondent vide letter dated 23.12.2014, of his nomination as its Arbitrator, and in this process a delay of 3 days had occurred. It is noted that on 22.12.2014 the respondent had sent a communication to the President of the Institute of Engineers (India), Kolkata, copy of which was received

by the petitioner on 24.12.2014 stating therein that the petitioner had failed to appoint its arbitrator within a period of 30 days after the receipt of the said notice from the respondent, an Arbitrator be appointed to the Tribunal on behalf of the petitioner company. The respondent had on 23.12.2014 sent a letter to the petitioner which was received on 26.12.2014 disagreeing with the extension of time for appointment of the Arbitrator by the petitioner.

4. It is also noted that the petitioner company had on 26.12.2014 informed the office of the Institute of Engineers (India), Kolkata reiterating the factual status that the petitioner had already nominated its Arbitrator and duly communicated the same to the respondent and requested the Institute of Engineers (India), Kolkata not to proceed with the matter. In response to the petitioner's letter dated 23.12.2014 the respondent vide its letter dated 27.12.2014 stated that since the petitioner company has not appointed an Arbitrator within the stipulated time, hence instructed the petitioner to withdraw the name of the Retired Hon'ble Judge, as its Arbitrator. The respondent again wrote a letter dated 29.12.2014 to the President, Institute of Engineers (India), Kolkata requesting to appoint an Arbitrator on behalf of the petitioner, in response to which the petitioner company requested the President, Institute of Engineers (India), Kolkata not to initiate any proceedings

with regard to appointment of Arbitrator as they have already nominated its Arbitrator. It transpired that the petitioner on or about 05.01.2015 received a letter dated 31.12.2014 from the office of Institute of Engineers (India), Kolkata informing the petitioner that Mr.Amiya Kumar Mohanty, FIE has been appointed as an Arbitrator on behalf of the petitioner. It is in this background, the present petition seeking the aforesaid reliefs has been filed.

5. Mr.Sandeep Sethi, learned Senior Counsel appearing for the petitioner would submit that the appointment of the Mr.Amiya Kumar Mohanty ('Mr.Mohanty' in short) is unsustainable as its nominee Arbitrator was appointed much before the appointment of Mr.Mohanty. He would further state that the petitioner had within a period of 30 days on 17.12.2014 informed the respondent of its efforts to seek consent of the Retired Hon'ble Judge before nominating him as its nominee Arbitrator. He would further state that on reading of sub clause 67.3 it is clear that even failure, on the part of the petitioner to nominate an Arbitrator within 30 days after receipt of the notice of appointment of its Arbitrator, the respondent herein should have approached this Court under Section 11(6) of the Act for appointment of an Arbitrator and not the Institute of Engineers (India), Kolkata. To that extent, the appointment of Mr.Mohanty is contrary to the agreement. He would rely

upon the followings judgments:-

(a) Datar Switchgears Ltd. vs. Tata Finance Ltd. & Anr.
2000 (8) SCC 151

(b) Ace Pipeline Contracts Private Limited vs. Bharat
Petroleum Corporation Limited 2007 (5) SCC 304

6. On the other hand, Mr. Rajiv Nayar, learned Senior Counsel for the respondent would submit that the respondent had rightly approached the Institute of Engineers (India), Kolkata for appointment of an Arbitrator on behalf of the petitioner, on petitioner's failing to nominate its Arbitrator within 30 days of receipt of notice of appointment of Arbitrator from the respondent. He would state that the respondent had on 22.12.2012 itself sent a communication to the Institute of Engineers (India), Kolkata calling upon them to nominate an Arbitrator on behalf of the petitioner. The said communication is prior in time and before the petitioner could nominate its Arbitrator. Alternatively, he would submit that the present petition itself is not maintainable inasmuch as the petitioner in the present petition as is clear from the reliefs prayed for in the petition is rather challenging the appointment of Mr. Mohanty and seeking a confirmation of appointment of its Arbitrator. According to him, there is no prayer for appointment of an Arbitrator in the petition under Section 11(6) of the Act. He would further state that the petitioner is precluded from challenging the constitution of an Arbitral Tribunal

under Section 11(6) of the Act. He would further state that such a recourse is open to the petitioner before the Arbitral Tribunal which is in place in terms of Section 13 of the Act and thereafter under Section 34 of the Act. He in support of his contentions would rely upon the judgment of the Supreme Court reported as *Antrix Corporation Ltd. vs. Devas Multimedia Private Ltd. 2014 (11) SCC 560* which was followed by the Supreme Court in its latest judgment in the case of *Pricol Limited vs. Johnson Controls Enterprise Limited & Ors.* Arbitration Case (Civil) No.30/2014, decided by the Supreme Court on 16.12.2014. He would also state that the judgment of the Supreme Court in *Datar Switchgears Ltd.* (supra) and *Ace Pipeline Contracts Private Ltd.* (supra) would not help the case of the petitioner.

7. Having considered the submissions advanced by the learned counsel for the parties, this Court is of the view that without dilating on the merit of the submissions relating to the interpretation advanced by Mr.Sethi on sub clause 67.3 and more specifically keeping in view the prayer made by the petitioner in this petition, the petition per-se would not be maintainable under Section 11(6) of the Act as is clear from the judgment of the Supreme Court in *Antrix Corporation Ltd.* (supra), wherein the Supreme Court was considering inter-alia the following questions:-

“(1) Whether the jurisdiction of the Court under Section 11 extends to declaring as invalid the constitution of an Arbitral Tribunal purportedly under an arbitration agreement, especially, where the Tribunal has been constituted by an institution purportedly acting under the arbitration agreement?”

(2) Whether the jurisdiction of an Arbitral Tribunal constituted by an institution purportedly acting under an arbitration agreement can be assailed only before the Tribunal and in proceedings arising from the decision or award of such Tribunal and not before the Court under Section 11 of the Act?

(3) Whether, once an Arbitral Tribunal has been constituted, the Court has jurisdiction under Section 11 of the Act to interfere and constitute another Tribunal?”

The facts in the said case were that Article 20 of the agreement between the parties related to arbitration and provided that in the event of any dispute or difference arises between the parties as to any clause or provision of the agreement or as to the interpretation thereto or as to any account of valuation or as to rights and liabilities, acts, omissions of any party, such disputes would be referred to the Senior Management of both the parties to resolve the same within 3 weeks, failing which the matter would be referred to an Arbitral Tribunal comprising of 3 Arbitrators. It was provided that the seat of arbitration would be at New Delhi in India. It also provided that the arbitration proceedings would be held in accordance with the rules and procedures of the International Chamber of Commerce or UNCITRAL. On 25.02.2011 the petitioner company terminated the agreement with immediate effect in terms of Section 7(c)

read with Article 11(b) of the agreement. In keeping with the provisions of Article 20 of the arbitration agreement, the petitioner wrote to the respondent company on 15.06.2011, nominating its Senior Manager to discuss the matter and to try and resolve the dispute between the parties. However, without exhausting the mediation process, the respondent in terms of Article 20(a) unilaterally without any prior notice to the petitioner addressed a request for arbitration to the ICC, International Court of Arbitration on 29.06.2011, seeking resolution of the dispute arising under the agreement. Through the unilateral request for arbitration, the respondent sought constitution of an Arbitral Tribunal in accordance with the ICC Rules of Arbitration and nominated one Mr.V.V. Veedar as its nominee Arbitrator in accordance with the ICC Rules. According to the petitioner, it was only on 05.07.2011 that it came to learn that the respondent had approached ICC and had nominated Mr.V.V.Veedar as its nominee Arbitrator upon receipt of the copy of the respondent's request for arbitration forwarded by the ICC. By the said letter, the petitioner was also invited to nominate its nominee Arbitrator. Instead of nominating its arbitrator, the petitioner by its letter dated 11.07.2011, once again, requested the respondent to convene a senior management team in terms of the agreement. A meeting of the senior management team was held but the respondent insisted that party

should proceed to arbitration and did not discuss the issues in accordance with Article 20(a) of the Agreement. The petitioner appointed Justice Sujata V. Manohar (Retd.) as its Arbitrator and called upon the respondent to appoint its nominee Arbitrator within 30 days of the receipt of its notice. Consequently, the respondent invoked the jurisdiction of ICC on 29.06.2011. The petitioner subsequently invoked the arbitration agreement in accordance with the UNICITRAL Rules on the ground that the respondent has invoked the ICC Rules unilaterally without allowing the petitioner to exercise its choice. Having invoked the arbitration agreement under the UNICITRAL Rules, the petitioner called upon the respondent to appoint its arbitrator within 30 days of receipt of the notice. On 05.08.2011, the petitioner wrote to the ICC, stating that it has appointed its Arbitrator in accordance with the agreement between the parties asserting that in view of Article 20 of the agreement, the arbitral proceedings would be governed by the Indian law viz. the Arbitration and Conciliation Act, 1996. The respondent did not reply to the petitioner's letter dated 30.07.2011. However, the ICC, by its letter dated 03.08.2011 responded to the petitioner's letter dated 30.07.2011, wherein, it inter alia, stated that any decision as to the jurisdiction of the Arbitral Tribunal shall be taken by the Arbitral Tribunal itself. It is, in such circumstances, that an application under Section 11(4) read with

Section 11(10) of the Act being Arbitration Petition No. 20/2011 came to be filed by the petitioner before the Supreme Court, inter alia, seeking a direction against the respondent to nominate its Arbitrator in accordance with the agreement dated 28.01.2005 and UNICITRAL Rules to adjudicate the disputes which had arisen between the parties and to constitute the Arbitral Tribunal and to proceed with the arbitration.

8. The Supreme Court was of the following view:

“28. As will be evident from the aforesaid provisions, when any of the parties to an Arbitration Agreement fails to act in terms thereof, on the application of the other party, the Chief Justice of the High Courts and the Supreme Court, in different situations, may appoint an Arbitrator.

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31. The matter is not as complex as it seems and in our view, once the Arbitration Agreement had been invoked by Devas and a nominee Arbitrator had also been appointed by it, the Arbitration Agreement could not have been invoked for a second time by the Petitioner, which was fully aware of the appointment made by the Respondent. It would lead to an anomalous state of affairs if the appointment of an Arbitrator once made, could be questioned in a subsequent proceeding initiated by the other party also for the appointment of

an Arbitrator. In our view, while the Petitioner was certainly entitled to challenge the appointment of the Arbitrator at the instance of Devas, it could not do so by way of an independent proceeding under Section 11(6) of the 1996 Act. While power has been vested in the Chief Justice to appoint an Arbitrator under Section 11(6) of the 1996 Act, such appointment can be questioned under Section 13 thereof. In a proceeding under Section 11 of the 1996 Act, the Chief Justice cannot replace one arbitrator already appointed in exercise of the arbitration agreement.

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33. Sub-Section (6) of Section 11 of the 1996 Act, quite categorically provides that where the parties fail to act in terms of a procedure agreed upon by them, the provisions of Sub-Section (6) may be invoked by any of the parties. Where in terms of the Agreement, the arbitration clause has already been invoked by one of the parties thereto under the I.C.C. Rules, the provisions of Sub-section (6) cannot be invoked again, and, in case the other party is dissatisfied or aggrieved by the appointment of an Arbitrator in terms of the Agreement, his/its remedy would be by way of a petition under Section 13, and, thereafter, under Section 34 of the 1996 Act.

34. The law is well settled that where an Arbitrator

had already been appointed and intimation thereof had been conveyed to the other party, a separate application for appointment of an Arbitrator is not maintainable. Once the power has been exercised under the Arbitration Agreement, there is no power left to, once again, refer the same disputes to arbitration under Section 11 of the 1996 Act, unless the order closing the proceedings is subsequently set aside. In Som Datt Builders Pvt. Ltd. Vs. State of Punjab [2006 (3) RAJ 144 (P&H)], the Division Bench of the Punjab & Haryana High Court held, and we agree with the finding, that when the Arbitral Tribunal is already seized of the disputes between the parties to the Arbitration Agreement, constitution of another Arbitral Tribunal in respect of those same issues which are already pending before the Arbitral Tribunal for adjudication, would be without jurisdiction.

35. In view of the language of Article 20 of the Arbitration Agreement which provided that the arbitration proceedings would be held in accordance with the rules and procedures of the International Chamber of Commerce or UNCITRAL, Devas was entitled to invoke the Rules of Arbitration of the ICC for the conduct of the arbitration proceedings. Article 19 of the Agreement provided that the rights and responsibilities of the parties thereunder would be subject to and construed in accordance with the laws

of India. There is, therefore, a clear distinction between the law which was to operate as the governing law of the Agreement and the law which was to govern the arbitration proceedings. Once the provisions of the ICC Rules of Arbitration had been invoked by Devas, the proceedings initiated thereunder could not be interfered with in a proceeding under Section 11 of the 1996 Act. The invocation of the ICC Rules would, of course, be subject to challenge in appropriate proceedings but not by way of an application under Section 11(6) of the 1996 Act. Where the parties had agreed that the procedure for the arbitration would be governed by the ICC Rules, the same would necessarily include the appointment of an Arbitral Tribunal in terms of the Arbitration Agreement and the said Rules. Arbitration Petition No.20 of 2011 under Section 11(6) of the 1996 Act for the appointment of an Arbitrator must, therefore, fail and is rejected, but this will not prevent the Petitioner from taking recourse to other provisions of the aforesaid Act for appropriate relief”.

9. From the reading of the judgment of the Supreme Court in *Antrix Corporation Ltd.* (supra), it is clear that where in terms of the agreement, the arbitration clause has already been invoked by one of the parties, the provisions of sub section (6) cannot be invoked again and in case the other party is dissatisfied or aggrieved by the appointment of an

arbitrator in terms of the agreement, his/its remedy would be by way of a petition under Section 13 and thereafter under Section 34 of the Act. In the case of *Antrix Corporation Ltd.* (supra), an issue arose whether the ICC Rules or the UNCITRAL would govern the arbitration proceedings. It was the stand of the respondent in the said case that it would be ICC Rules. The Supreme Court was of the view, the invocation of the ICC Rules would be of course the subject to challenge in appropriate proceedings but not by way of an application under Section 11(6) of the Act.

10. Similarly, in the case of *Pricol Ltd.* (supra), the Supreme Court was considering an arbitration clause, which was in the following terms:

“30.2. In case of such failure, the dispute shall be referred to sole arbitrator to be mutually agreed upon by the parties. In case the parties are not able to arrived at such an arbitrator, the arbitrator shall be appointed in accordance with the rules of arbitration of the Singapore Chamber of Commerce”.

11. In the aforesaid case, it was not in dispute that Singapore Chamber of Commerce mentioned in clause 30.2 of Joint Venture Agreement is not an arbitration institution, having any rules for appointment of an arbitrator. The first respondent in the said case construing the said reference to “Singapore Chamber of Commerce” had moved the said

authority i.e. Singapore International Arbitration Centre (SIAC) for appointment of an Arbitrator. This was so done on 05.09.2014. A copy of the notice/intimation was received by the petitioner on 11.09.2014. Thereafter, the petitioner had instituted the proceedings before the Supreme Court on 15.09.2014. In the meantime, SIAC, exercising its powers under Section 8(2) read with Section 8(3) of the Singapore International Arbitration Act, had appointed one Mr. Steven Y.H. Lim as the Sole Arbitrator. In a preliminary meeting between the parties and the learned Sole Arbitrator held on 30th October, 2014, it was indicated by the petitioner that it would be challenging the jurisdiction of the Sole Arbitrator appointed by the SIAC. Accordingly, on the directions of the learned Sole Arbitrator, there has been an exchange of written submissions on the issue of jurisdiction. The Sole Arbitrator has ruled that the appointment made by the SIAC under IAA is valid as the parties had expressly stated that the Singapore would be the seat of arbitration. The Supreme Court in para 9 of *Pricol Limited (supra)*, has held as under:

“9. From the relevant facts of the case, it is also clear that the respondents at one time had suggested the name of a retired judge of the Supreme Court of India as the sole Arbitrator, which was not agreed to by the petitioner, who in turn, was inclined to

nominate another learned judge. Be that as it may, in such a situation, the respondents by invoking Arbitration clause 30.2 had approached SIAC for appointment of an Arbitrator. This was on 5th September, 2014 i.e. before the present proceeding was instituted by the petitioner. Though the notice of the said request was served on the petitioner on 11th September, 2014, no steps were taken by the petitioner to pre-empt the appointment of a sole Arbitrator by SIAC. Mr. Steven Y.H. Lim came to be appointed as the sole Arbitrator by the SIAC on 29th September, 2014. The petitioner has submitted to the jurisdiction of Mr. Steven Y.H. Lim. Even if it is held that such participation, being under protest, would not operate as an estoppel, what must be acknowledged is that the appointment of the sole Arbitrator made by SIAC and the partial award on the issue of jurisdiction cannot be questioned and examined in a proceeding under Section 11(6) of the Act which empowers the Chief Justice or his nominee only to appoint an Arbitrator in case the parties fail to do so in accordance with the terms agreed upon by them. To exercise the said power, in the facts and events that has taken place, would really amount to sitting in appeal over the decision of SIAC in appointing Mr. Lim as well as the partial award dated 27th November, 2014 passed by him acting as

the sole Arbitrator. Such an exercise would be wholly inappropriate in the context of the jurisdiction under Section 11(6) of the Act, a view already expressed by this Court in a recent decision in Antrix Corp. Ltd. vs. Devas Multimedia P. Ltd. [Arbitration Petition NO.20 of 2011 decided on May 10, 2013, reported in (2013) 6 SCR 453]

(emphasis supplied)

10. For the aforesaid reasons, this application under Section 11(6) of the Act has to fail. It is, accordingly, dismissed, however, leaving it open to the petitioner to avail of such remedies as may be available to it in law.”

12. From the position of law as expounded by the Supreme Court in the aforesaid two judgments, it is clear that the issue of jurisdiction cannot be questioned and examined in the proceedings under Section 11(6) of the Act, and necessarily, to be contested before the Arbitral Tribunal, as held in the case of *Antrix Corporation Ltd. (supra)*. Insofar as the submission of Mr.Sethi that the judgment of the Supreme Court in *Antrix Corporation Ltd. (supra)* is not applicable to facts, as according to him the case in hand relates to the issue whether or not the respondent could have approached the Institute of Engineers (India) for appointment of Arbitration on failure on the part of the

petitioner to appoint its nominee arbitrator, which issue is different from the one which fell for consideration of the Supreme Court in the said case, is concerned, suffice to state, the submission is liable to be rejected for more than one reason, inasmuch as appointment of an arbitrator, wrongly or not in accordance with provisions of Clause 67.3 is different from saying, no arbitrator was appointed. It is not the case of the petitioner that no arbitrator has been appointed. Rather its case is, a Retired Hon'ble Judge has been appointed, which appointment has not been accepted by the respondent. Such an eventuality also debars invocation of Section 11(6) of the Act. The observation of the Supreme Court in *Antrix Corporation Ltd.* (supra) within para No.35 becomes relevant, which reads as under:-

“35.Once the provisions of the ICC Rules of Arbitration had been invoked by Devas, the proceedings initiated thereunder could not be interfered with in a proceeding under Section 11 of the 1996 Act. The invocation of the ICC Rules would, of course, be subject to challenge in appropriate proceedings but not by way of an application under Section 11(6) of the 1996 Act.”

13. That apart, Mr.Rajiv Nayar is correct in referring to Section 13(2) & (4) and Section 34(2)(v) of the Act to submit that the jurisdiction of the Tribunal can be challenged under the said Sections

and not under Section 11(6) of the Act. Suffice to state, I am of the view that the present petition, per se, is not maintainable under Section 11(6) of the Act and the parties necessarily have to challenge the constitution of the Arbitral Tribunal before the Tribunal itself, consisting of the Arbitrator so nominated by the Institute of Engineers (India). The present petition is devoid of merit.

14. In view of my conclusion limited to the aspect of the maintainability of the petition, I do not think, it would be necessary for me to refer and deal with the judgments so relied upon by Mr.Sandeep Sethi, learned Senior Counsel for the petitioner.

15. It is made clear that the present order is not an expression on the merit of the contention of the petitioner with regard to the interpretation sought to be advanced by the learned Senior Counsel for the petitioner on sub-clause 67.3.

16. The petition is accordingly dismissed. No costs.

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Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

JANUARY 19, 2015

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