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

+ **ARB.P. 613/2016**

JINDAL RAIL INFRASTRUCTURE LIMITED Petitioner

Through: Mr. Manoj K. Singh & Mr. Nilava Banerjee,
Advocates.

versus

UNION OF INDIA & ANOTHER Respondents

Through: Mr. Jagjit Singh, Sr. Standing Counsel.

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **04.11.2016**

1. By letter dated 20th September, 2016, the Respondent sought to nominate an Executive Director Railway Stores (C) of the Railway Board as sole arbitrator and sought the consent of the petitioner.
2. By the letter dated 27th September, 2016, the Petitioner, while declining to give its consent, drew the attention of the Railways to the provisions of the Arbitration and Conciliation Act, 1996 ('Act') as amended with effect from 23rd October, 2015.
3. What is clear from the correspondence exchanged between the parties is that the Respondent does not deny the existence of an arbitration clause and that disputes have arisen between the parties which require to be referred to arbitration.

4. The Petitioner is right in pointing out that where the invocation of the arbitration clause takes place after 23rd October, 2015, the amended provisions of the Act that would become applicable. In terms of Section 12 (1) (a) read with Schedule 5 of the Act, the question of the Railways appointing one of their own employees or even an ex-employee as an arbitrator does not arise.

5. In that view of the matter, the court proposes Justice A.K. Patnaik, a former Judge of the Supreme Court of India (Landline No. 011-26963011) as the Sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. In the first instance, Justice Patnaik will make the disclosures in terms of Section 11 (8) read with Section 12 (1) of the Act and thereafter enter upon reference. He would then fix his own terms and communicate them to the parties. The fees will be in terms of the schedule to the Act. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

6. The parties will appear before Justice Patnaik on 12th December, 2016 at 4 pm or some other date and time convenient to the learned Arbitrator which would be conveyed by him to the counsel for the parties one week prior to the date fixed for hearing. The venue for the first hearing would be arranged by the Petitioner and communicated to Justice Patnaik as well as the Respondent one week in advance. The expenses thereof will be shared

equally by the parties.

7. The petition is disposed of. A copy of this order be communicated forthwith to Justice Patnaik.

S.MURALIDHAR, J.

NOVEMBER 04, 2016
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