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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 632/2016

INDIAN RAILWAY CATERING AND
TOURISM CORPORATION

..... Petitioner

Through: Mr. Divya Prakash Pande & Ms. Bhawana
Pande, Advocates.

versus

MAA TARA TRADER

..... Respondent

Through: Respondent proceeded *ex parte* today.

CORAM: JUSTICE S.MURALIDHAR

ORDER

16.12.2016

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1. Despite service of notice on the Respondent and despite a passover none has appeared on its behalf. The Respondent is accordingly proceeded *ex parte*.

2. The existence of the arbitration clause and its invocation by the Petitioner are not disputed. In terms of Clause 5 of the conditions of the contract where the value of the dispute exceed Rs.15 lakh there has to be a three member Arbitral Tribunal (AT), who shall be among a panel of five arbitrators prepared by the Petitioner. Clause 5.5(c) envisages that the Petitioner and the Respondent will choose one arbitrator each and the two so chosen shall choose the third Arbitrator.

3. It is stated that in the present case the Respondent failed to choose from

the panel of arbitrators and therefore the Petitioner accordingly nominated an Arbitrator on its behalf. The two Arbitrators, both of whom, were actually nominated by the Petitioner then chose the third Arbitrator to complete the AT.

4. The Respondent then filed an application before the AT under Section 16 of the Arbitration & Conciliation Act, 1996 (Act) questioning the jurisdiction of the AT. The AT by an order dated 23rd June, 2016 allowed the said application by holding that clause 5.5(d) & (e) authorising the IRCTC to nominate the Arbitrator apply only where the dispute was to be decided by the sole Arbitrator. The clauses are silent on the procedure to be adopted where one of the parties fail to suggest a nominee in the event of a three-member AT.

5. In the above circumstances the present petition has been filed invoking Section 11(4) of the Act.

6. With there being no appearance on behalf of the Respondent, the Court accepts the plea of the Petitioner that the Court should appoint a sole Arbitrator to adjudicate the disputes. Learned counsel for the Petitioner states, on instructions, that although the arbitration clause envisages a three member AT, they are agreeable to having the disputes adjudicated by a sole Arbitrator.

7. The Court accordingly appoints Mr. Justice S.L. Bhayana, former Judge of this Court (Mobile No.9871300028) to adjudicate the disputes that have arisen between the parties including their claims and counter-claims.

8. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi Arbitration Centre (Arbitrators' Fees) Rules. The learned Arbitrator will comply with the requirements of the Act as amended with effect from 23rd October 2015 and proceed in the matter after service of notice on the Respondents.

9. The petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

10. *Dasti*.

S. MURALIDHAR, J.

DECEMBER 16, 2016

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