

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

COMM.ARBITRATION APPLICATION NO.16 OF 2017

Dolphin Offshore Enterprises (India) Limited)...Applicant
V/s.

Essar Offshore Subsea Limited)....Respondents

Mr.V.K.Ramabhadran, Senior Advocate a/w Mr.Suraj Desai i/by Suraj Desai Almeida for the applicant.

Mr.Srinivas A.Chatti i/by Cyril Amarchand Mangaldas for respondents.

CORAM : K.R.SHRIRAM,J

DATE : 28.11.2017

P.C.:-

1 At the beginning counsel for respondents stated that respondents also wish to appoint only one arbitrator instead of panel of 3 arbitrators but respondents are not agreeable to Mr.Justice Mohit Shah as sole arbitrator. Matter was stood over for respondents' counsel to take instructions and suggest a name. When the matter was called out again counsel for respondents stated that Mr.K.R.Tiwari, an advocate practicing in this court be appointed as sole arbitrator or atleast as respondents' nominee arbitrator.

2 Counsel for respondents does not dispute that there is an arbitration agreement. Counsel for respondents also does not dispute

that they have received a letter invoking arbitration from the applicant nominating Mr. Justice Mohit Shah, former Chief Justice of this Court and of Calcutta High Court.

3 The Apex Court in its judgment in the matter of ¹*Datar Switchgears Ltd. vs. Tata Finance Ltd. & Anr.* has held that if the party that had a right to make an appointment does not make the appointment before the application under Section 11 is filed, forfeits that right to make appointment. Respondents having failed to make the appointment, have forfeited its right to appoint arbitrator.

4 Therefore, this court appoints Mr. Justice V.M. Kanade (retired), former Judge of this court having his office at Examiner Press Building, 2nd Floor, Office No.19, Dalal Street, Near Dwarka Hotel, Fort, Mumbai, Mobile No.9820308228, as arbitrator on behalf of respondents ;

5 Application accordingly stands disposed.

(K.R.SHRIRAM,J)

1 (2000) 8 Supreme Court Cases 151