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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 134/2017
TRINITY ELECTRIC SYNDICATE PRIVATE LIMITED..Petitioner
Through Mr.Narendera M.Sharma and
Mr.Abhishek Sharma, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED & ANR. Respondents
Through Mr.Sanjib K.Mohanty, Sr.Panel
Central Govt. Counsel for R-2.
Ms.Rajni Chauhan, Advocate for R-2
and 3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **17.10.2017**

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a Sole Arbitrator to adjudicate the dispute between the parties.
2. It is the case of the petitioner that on 17.11.1999, respondent No.2 invited bids for supply of Test instruments. A purchase order was placed on the petitioner for supply of 146 Optical Splicing Machines on 10.03.2000.
3. Disputes having arisen between the parties, the petitioner on 15.01.2016, issued a notice invoking the arbitration clause and requested respondent No.2 to appoint a sole arbitrator in terms of the arbitration clause. A reminder is also said to have been sent on 21.01.2016. On 16.04.2016, the petitioner received a letter from respondent No.1 confirming receipt of the communication for appointment of an arbitrator.

A similar letter is also said to have been received on 30.05.2016. As steps have not been taken, the present petition has been filed.

4. On 15.02.2017, learned counsel for the respondent No.1 had appeared and accepted notice. Subsequently, on 24.04.2017 and on 04.05.2017, none appeared for respondent No.1. On 07.07.2017, learned counsel for respondent No.1 entered appearance and sought some time to file a reply stating that he has only recently been engaged. Taking into account the conduct of respondent No.1, subject to payment of cost of Rs.5,000/-, the respondent No.1 was permitted to file a reply within four weeks.

5. Today, despite pass-over, none has appeared for respondent No.1. Reply has not been filed. Cost has also not been paid. Respondent No.1 is proceeded *ex parte*. Learned counsel who has entered appearance for respondent No.2 states that it is for respondent No.1 to take steps for appointment of the arbitrator and that respondent No.2 has nothing to do with this matter.

6. As per said clause 20 (i) of the Tender Conditions, in the event of any question, dispute or difference arising between the parties, the same shall be referred to sole arbitration of the Director General, Department of Telecommunications or in case his designation is changed or his office is abolished then in such case to the sole arbitration of the officer for the time being entrusted with the functions of the Director General, Department of Telecommunications or by whatever designation such officers may be called, and if the Director General or the said officer is

unable or unwilling to act as a sole arbitrator, he may appoint another person.

7. In view of the fact that despite having received a notice in the arbitration clause no steps have been taken by the petitioner, in terms of the judgment of the Supreme Court in the case of *Datar Switch Gear v. Tata Finance Ltd. (2000) 8 SCC 151* and *Deep Trading Company v. Indian Oil Corporation Civil Appeal No.2673/2013 decided on 22.03.2013*, the respondents have lost their right to appoint an arbitrator.

8. In any case, a perusal of the arbitration clause shows that the Director General or his nominee is to be the sole arbitrator to adjudicate the dispute between the parties. In terms of the Section 12 (5) of the Act read with the Seventh Schedule, the said Director General cannot act as arbitrator and nor can he nominate any arbitrator to adjudicate the dispute between the parties.

9. In view of the above, I appoint Shri P.C.Ranga, Retired Additional District Judge, Delhi (Mobile No. 9868905228) as a Sole Arbitrator to adjudicate the dispute between the parties. The learned arbitrator will fix his fees in consultation with the learned counsel for the parties.

10. A copy of this order be sent to the learned arbitrator.

11. Petition stands disposed of.

JAYANT NATH, J.

OCTOBER 17, 2017/rk