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

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+ **O.M.P. (T) (COMM.) 68/2016 & IA 13214/2016**

MALHOTRA ELECTRONICS PVT. LTD. Petitioner

Through: Mr. Girish Chandra, Advocate.

versus

ARISE INDIA LIMITED Respondent

Through: Mr. Naman Issrani, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **19.01.2017**

1. One of the objections raised by the Respondent to this peititon seeking termination of the mandate of the Arbitrator is that the amended provisions of Arbitration and Conciliation Act, 1996 ('Act') which came into effect from 23rd October 2015 do not apply to the present proceedings.

2. This submission overlooks the fact that on 4th January 2016, the Respondent sent a notice for appointment of an Arbitrator and named Mr. Rajeev Tomar, Advocate as Arbitrator. The commencement of the arbitration proceedings in terms of Section 21 of the Act is, therefore, after the amendment. Therefore, this objection is negatived.

3. It is seen that in all the printed purchase orders issued by the Respondent the name of Mr.Tomar finds mention as Arbitrator. It is obvious that Mr.

Tomar is a named Arbitrator in the disputes of the Respondent. In the circumstances, the disinclination of Mr. Tomar to make a declaration in terms of Section 12 of the Act as amended with effect from 23rd October 2015 is inexcusable.

4. Consequently, the order dated 16th July 2016 passed by the Arbitrator closing the right of the Petitioner to file reply is hereby set aside. The Court is satisfied that under Section 14 (1)(a) of the Act, the Arbitrator Mr Tomar has become both *de jure* and *de facto*, unable to perform his functions. Accordingly, his mandate is hereby terminated.

5. In that view of the matter, the Court proposes Dr. T.R. Naval, a former Additional District Judge (Mobile No. 9910384662) as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. In the first instance, the proposed Arbitrator will make a disclosure in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. 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. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The DAC will provide to the parties copies of the said disclosure.

6. Subject to compliance with the above directions, Dr.T.R. Naval will act as Arbitrator and enter upon reference. The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators'

Fees) Rules.

7. The petition is disposed of. A copy of this order be communicated to Dr. T.R. Naval as well as Additional Coordinator, DAC forthwith.

S.MURALIDHAR, J

JANUARY 19, 2017

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