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

+ **ARB.P. 140/2018**

SUSHMA DEVANGA NAGARAJA Petitioner

Through: Mr Sanjeev Kumar Sharma,
Advocate.

versus

CLOUDTAIL INDIA PRIVATE LIMITED Respondent

Through: Mr Sujoy Kumar, Mr Prince Pawaiya
and Mr Tushar Kochhar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a presiding arbitrator be appointed before the Arbitral Tribunal be constituted. The petitioner asserts that certain disputes have arisen in relation to a Master Carrier Service Agreement dated 19.05.2017 (hereafter 'the Agreement') which are required to be adjudicated by an arbitral tribunal. The Agreement includes an arbitration clause, which is set out below:-

“9.2 Governing Law/Venue. This Agreement is governed by the laws of India, excluding its conflicts of law rules. All disputes and differences arising out of or in connection with this Agreement, if not resolved within 15 (fifteen) days through discussion between the Parties, shall be referred to the arbitration of 3 (three) arbitrators, 1 (one) nominated by each party, and the third (the presiding arbitrator) appointed by the 2 (two) arbitrators so nominated. The decision and award determined by such arbitration will be

final and binding upon the Parties. The Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as may be in force from time to time. The arbitration proceedings shall be conducted in English and the venue of the arbitration shall be New Delhi. The arbitrators shall pass a reasoned award in writing within 4 (four) months of the date of the appointment of the presiding arbitrator.”

2. In view of the disputes that are stated to have arisen between the parties in relation to the Agreement, the petitioner invoked the arbitration clause by a letter dated 23.11.2017 and the petitioner also nominated an arbitrator as contemplated under the arbitration clause. The respondent responded by a letter dated 27.12.2017 and nominated its arbitrator. The respondent also requested the petitioner to consider whether a sole arbitrator could be appointed instead of an arbitral tribunal consisting of three members. The two arbitrators nominated by the parties have been unable to concur on appointment of a third arbitrator and this has led the petitioner to file the present petition.

3. After some arguments, the learned counsel appearing for the parties state that the disputes be referred to a sole arbitrator instead of an arbitral tribunal consisting of three members.

4. With the consent of the parties, Justice R.V. Easwar (Retired), Delhi High Court (Mobile No. 9560899997) is appointed as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Agreement. The arbitration shall be conducted in New Delhi. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

5. The Arbitrator shall fix his fees in consultation with the parties and having regard to Schedule IV of the Act.
6. The parties are at liberty to approach the Arbitrator for further proceedings. The parties have also agreed that the Arbitrator shall conclude proceedings within a period of one year from today.
7. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 20, 2018
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