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

+ O.M.P. (T) (COMM.) 35/2018

INFOSYS LTD

..... Petitioner

Through: Mr Gopal Jain, Sr. Advocate with Ms
Chinmayee Chandra, Advocates.

versus

SOFTWARE TECHNOLOGY PARK OF
INDIA

..... Respondent

Through: Mr Ravi Kishore, Mr Niraj Singh and
Mr Deepak Jaswal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.05.2018

IA No.6018/2018

1. Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 35/2018

2. The petitioner has filed the present petition under Section 14(2) and 11(5) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

- a. Grant ad-interim ex parte stay of the arbitration proceedings before Mr Jainder Singh pending disposal of the present Petition;
- b. Pass an order terminating the mandate of Mr Jainder Singh.
- c. Appoint an independent and impartial sole arbitrator to adjudicate the disputes which have arisen between the parties under the Agreement and Work Order dated

09.04.2014 and the RFP.”

3. The learned counsel appearing for the respondent states at the outset that Mr Jainder Singh, the Arbitrator appointed by the Director General of the respondent (Software Technology Park of India – hereafter ‘STPI’), has already withdrawn from the proceedings. He further states that the Director General of the STPI shall proceed to appoint an arbitrator to fill up the vacancy caused by the recusal of Mr Jainder Singh.

4. The arbitration clause, as incorporated in the RFP dated 13.07.2013, reads as under:-

“11.38. Arbitration

i. All disputes, differences, claims and demands arising under this contract agreement shall be referred to arbitration of a sole arbitrator to be appointed by the Director General, STPI.

ii. The provisions of the Arbitration and Conciliation Act, 1996 shall be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof.”

5. In terms of the said arbitration agreement, Director General of STPI is required to appoint a sole arbitrator to adjudicate all disputes, differences or claims arising under the agreement in question. Mr Jain, learned Senior Counsel appearing for the petitioner also clarifies that he does not rely on the decision of the ***TRF Ltd. v. Energo Engineering Projects Ltd.: (2017) 8***

SCC 377 to challenge the right of the Director General, STPI to appoint an arbitrator although the same has been referred to in the petition.

6. Mr Jain referred to the extract of the 246th Report of the Law Commission, which requires the appointing authority to appoint an independent and impartial arbitrator. This said principle is unexceptionable and this Court has no doubt that the Director General, STPI would ensure that a fair and impartial arbitrator is appointed to fill up the vacancy caused by recusal of Mr Jainder Singh.

7. No further orders are required to be passed in this petition.

8. The petition is disposed of.

9. Order *dasti*.

VIBHU BAKHRU, J

MAY 03, 2018
MK