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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION NO.67 OF 2019

Tech Mahindra Ltd.	..Applicant
Vs.	
Tata Communications Transformation Services Ltd.	..Respondent

Mr.Aditya Pimple with Mr.Aditya Khandeparkar and Mr.Deepak Singh
i/b.M/s.Khandeparkar Law Office for Applicant.
Mr.Siddharth Ranade and Mr.Ketan Gaur i/b. M/s.Trilegal for
Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 10th APRIL, 2019

ORAL JUDGMENT:

Heard learned Counsel for the applicant and the learned Counsel
for the respondent.

2. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant prays for appointment of an arbitral tribunal to adjudicate the disputes and differences which have arisen between the parties under the Long Form Procurement Agreement dated 2 September 2015 (for short, “the said agreement”), which came to be terminated by the respondent by its

letter dated 12 December 2017.

3. The arbitration agreement between the parties is contained in clause 24(b) which reads thus:-

“24. Miscellaneous.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of India, without giving effect to any principles of conflict of laws. The Parties agree to submit to exclusive personal jurisdiction in Mumbai for all claims and actions arising under or in connection with this Agreement.

(b) The Parties will work in good faith to resolve any disputes under this Agreement amicably. Should any Dispute arise between the Parties (hereinafter referred to as the “Dispute”) concerning this Agreement or the interpretation of this Agreement or its termination, the Parties shall attempt to resolve the Dispute by negotiation. In the event of a Dispute, each Party shall designate a representative to negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. If such negotiations do not resolve the dispute within ten (10) days of written communication of the Dispute, then each Party will nominate one manager or other senior officer as its representative. These representatives will meet within ten (10) days of their nomination to attempt to resolve such Dispute. The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other Party such information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The specific format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position. The Parties acknowledge that any such written statements will be prepared in connection with settlement negotiations, and as such will be privileged and shall not be used against the Party who prepared such statement unless it is subsequently introduced by the preparing Party in any formal proceedings. If the Parties' designated managerial representatives are unable to resolve the Dispute within thirty (30) days from the date of the written communication requesting referral to such managers/executives, and either

Party wishes to pursue its rights relating to such Dispute, then the Dispute will be subject to binding arbitration conducted in accordance with the then current rules of UNCITRAL. In such event: (1) the Parties shall appoint a sole arbitrator, who shall be knowledgeable in the field of communications and fluent in English; if an arbitrator is not jointly appointed within thirty (30) days after the reference to arbitration, the arbitrator shall be appointed in accordance with UNCITRAL rules; (2) the place of arbitration shall be Mumbai, India, and the law under which the arbitration is to be conducted shall be the laws set forth in this Section; (3) the arbitration proceedings shall be conducted, and the award shall be rendered in the English language; (4) each Party shall bear its own costs of the arbitration, including the costs incurred by the Parties in preparing and presenting their cases; provided, however, the arbitrator may order the expenses of the arbitration to be paid by the non-prevailing Party; (5) the award shall state the reason upon which it is based; (6) the award of the arbitrator shall be final and binding and may be entered and enforced as a judgment against a Party in any court of competent jurisdiction; (7) the arbitration proceedings are to be held in private and treated as confidential so that unless otherwise agreed, all evidence given to the arbitrator or document produced at any hearing is to be considered as Confidential so that unless otherwise agreed, all evidence given to the arbitrator or document produced at any hearing is to be considered as Confidential Information under Section 22 hereof; (8) nothing in the foregoing shall prevent a Party from seeking injunctive relief relating to confidentiality or intellectual property violations; and (9) each Party shall continue to perform its obligations pursuant to this Agreement during the pendency of any Dispute and until this Agreement shall expire or terminate in accordance with its terms.”

(emphasis supplied)

4. The case of the applicant is that consequent to the termination of the said agreement, a notice dated 3 December 2018 came to be issued by the applicant's advocates to the respondent's advocates in furtherance of the earlier notices dated 19 March 2018, 26 April 2018 and 10 September 2018, recording applicant's grievance in regard to the

termination of the agreement by the respondent. The applicant inter-alia recorded that the respondent was liable to pay to the applicant a principal amount of Rs.41.06 Crores towards illegal termination, payment on pending invoices and other costs. The relevant contents of the applicant's notice in regard to the disputes which are stated to have arisen between the parties and the method of resolution of the disputes as suggested is required to be noted, which read thus:-

“5. Thus, in the premises aforesaid, our Client is left with no other alternative but to invoke Arbitration against you (which our Client hereby does) in accordance with the provisions of Clause 24 (b) of the said Agreement in order to seek reliefs towards damages and such other reliefs as our Clients are entitled in law. Our Client hereby suggests that Dr. Justice F.I. Rebello (Retd.) be nominated and appointed by the parties jointly as the Sole Arbitrator to adjudicate the disputes between the parties.”

5. This notice of the applicant's Advocate was responded by the letter dated 31 December 2018 of the Advocate for the respondent. In regard to the suggestion of the applicant to nominate a sole arbitrator as referred in paragraph 5 of the said letter of the applicant's Advocate, the respondent in paragraph 14 recorded that the respondent did not agree with the applicant's proposal to appoint Dr. Justice F.I. Rebello (Retd.) as the sole arbitrator and instead, proposed to appoint Mr. Justice Deepak Verma (Retd.) as the sole arbitrator. Paragraph 14 of the reply letter as addressed on behalf of the respondent needs to be noted which reads thus:-

“14. In response to the contents of paragraphs 5 and 6, we respectfully disagree with the proposal given by Tech M for the appointment of Dr. Justice F.I. Rebello (Retd.) as the sole arbitrator. Instead, we hereby propose Justice Deepak Verma (Retd.) as the sole arbitrator.”

6. In response to the said letter of the respondent's Advocates dated 31 December 2018, the Advocates for the applicant by their letter dated 31 December 2018 recorded that as the parties are unable to jointly appoint a sole arbitrator within 30 days from the reference to arbitration, referring to article 4 of the UNCITRAL Arbitration Rules (for short the “UNCITRAL Rules”) it was proposed that the Bombay High Court be designated as the appointing authority to appoint a sole arbitrator in the matter, in accordance with Section 11 of the ACA. This letter of the applicant's Advocate designating this Court as the appointing authority was never replied by the respondent. This is an admitted position.

7. It is on this background, the present application came to be filed praying for appointment of an arbitral tribunal by invoking the jurisdiction of this Court under Section 11(6) of the ACA.

8. The respondent has appeared, as also a reply affidavit has been filed. The application is vehemently contested. In short the case of the

respondent as pleaded in the reply is that this petition under Section 11 of the ACA itself is not maintainable considering the arbitration agreement between the parties whereby the parties have agreed to be governed by the procedure for appointment of an arbitral tribunal following the UNCITRAL Rules, which is required to be followed in appointing an arbitral tribunal to adjudicate the disputes between the parties. For this reason neither the provisions of Section 11 or for that matter the provisions of the ACA become applicable considering the arbitration agreement between the parties. It is submitted that as there was a clear disagreement between the parties on appointing an arbitral tribunal, the arbitral tribunal could only be appointed by following the procedure under Articles 4, 6 and 8 of the UNCITRAL Rules. Thus in the absence of the said procedure being followed, this application cannot be entertained. In sum and substance, this is the case in opposition of the respondent in the reply affidavit.

9. Learned Counsel for the applicant referring to the correspondence on record would submit that there was an invocation of the arbitration agreement on the part of the applicant by the applicant's Advocate's letter dated 3 December 2018 whereby the applicant had nominated Dr. Justice F.I. Rebello (Retd.) as the sole arbitrator to adjudicate the disputes between the parties, requesting for a concurrence of the

respondent for such appointment. It is submitted that however, the respondent by its Advocate's letter dated 31 December 2018 did not accept the said nomination, but in turn, proposed to appoint Mr. Justice Deepak Verma (Retd.) as the sole arbitrator. It is submitted that when such a refusal was made on the part of the respondent, the provisions of Article 4 of the UNCITRAL Rules had become applicable in as much as it was available to the respondent to make a proposal for designation of an "appointing authority" as referred in Article 6, paragraph 1 of the UNCITRAL Rules. It is submitted that no such designation was made by the respondent. It is submitted that accordingly the applicant by its Advocate's letter dated 4 January 2019 acting upon the provisions of Article 4 proposed that the Bombay High Court be approached as an appointing authority to appoint a sole arbitrator in accordance with Section 11 of the ACA. This according to the petitioner was in consonance with Article 6 paragraph 1 of the UNCITRAL Arbitration Rules which provides for designating and appointing authorities. It is submitted that even for such designation, the respondent never objected or raised any issue and for the first time, in the reply affidavit to this application, the respondent has contended that the UNCITRAL Rules needs to be followed when actually the said rules have been followed for designation of the Bombay High Court as an appointing authority. It is thus the submission of the learned Counsel for the applicant that taking

into consideration the provisions of Article 32 of the UNCITRAL Arbitration Rules read with Section 4 of the ACA which also contemplates waiver of right to object, the respondent has lost its right to contend that the present application is not maintainable and opposed an appointment of the arbitral tribunal at the hands of this High Court. Learned Counsel for the applicant would submit that this more particularly in view of the fact that both the parties are Indian companies and that the parties have agreed for the application of Indian laws to the contract.

10. Learned counsel for the applicant would submit that even considering the arbitration agreement between the parties and the applicant having exercised its rights under the arbitration agreement and even following the UNCITRAL Rules, the respondent in not objecting to this Court, been designated as an appointing authority, the respondent would not be correct in objecting to the present application. It is submitted that the contention as urged on behalf of the respondent is nothing but to delay the arbitral proceedings and unwarrantedly an insistence is made that the applicant should approach the Secretary General of the Permanent Court of arbitration at the Hague, when this Court has jurisdiction to appoint an arbitral tribunal as per the agreement between the parties. It is thus submitted that the insistence

of the respondent that the applicant should approach the UNCITRAL authorities is wholly misconceived considering the clear provisions of Articles 4, 6 and 8 of the UNCITRAL Rules.

11. On the other hand, learned Counsel for the respondent relying on the reply affidavit would contend that the arbitral agreement between the parties is clear that the parties need to abide by the UNCITRAL Rules in making appointment of an arbitral tribunal. It is submitted that party autonomy is imperative and would be the paramount consideration even under the scheme of the Arbitration and Conciliation Act, 1996, and thus the arbitration procedure as contained under the agreement is required to be followed. Learned Counsel for the respondent referring to Article 6(1) and Article 6(2) of the UNCITRAL Rules submits that there is no occasion for the respondent to object or raise any issue in regard to the applicant designating this High Court as an authority to appoint an arbitral tribunal. It is submitted that the respondent has rightly objected to the designation of the High Court as an authority to appoint an arbitral tribunal for the first time in the reply filed before this Court. Referring to Article 4 of the UNCITRAL Arbitration Rules, it is submitted that paragraph 2(b) of Article 4 was an option which was available to the parties and it was not mandatory for the respondent to designate and appoint an authority when the respondent replied to the

applicant's arbitration notice dated 3 December 2018 by its Advocate's letter dated 31 December 2018. It is further submitted that such an obligation to accept the designation as made by the applicant under paragraph 1 of Article 6 also cannot be read. It is next submitted that the contentions as urged on behalf of the applicant are on a misreading of Articles 4 and 6 of the UNCITRAL Rules. Even the contention as urged on behalf of the applicant on the ground of waiver amounts to a patent misreading of Articles 4 and 6 of the UNCITRAL Arbitration Rules. It is submitted that merely because the respondent has remained silent by not responding to the notice of the applicant's Advocate dated 4 January 2019 designating this Court as the appointing authority, this in no manner altered the requirements of Article 6 of the UNCITRAL Arbitration Rules and it is only when the applicant takes steps under Article 6, the right to object would arise to the respondent and not before such an application is made. It is submitted that approach of the applicant is to totally to destroy the arbitration agreement, as also it is totally inconsistent with the arbitration agreement between the parties. It is thus submitted that proper course of action for the applicant is to approach the authorities under the UNCITRAL Rules and only under such procedure an arbitral tribunal can be appointed and not in another manner including the present application. Learned Counsel for the respondent in supporting his submission has placed reliance on the

decisions of the Supreme Court in case of **Antrix Corporation Limited Versus Devas Multimedia Private Limited**¹, and **Iron & Steel Co. Ltd. Versus Tiwari Road Lines**².

12. On the above conspectus, I have heard learned Counsel for the parties. I have also perused the documents placed on record and the arbitration agreement and the relevant UNCITRAL Rules. At the outset the relevant portion of the arbitration agreement for convenience is extracted hereunder and reads thus:-

“..... If the Parties' designated managerial representatives are unable to resolve the Dispute within thirty (30) days from the date of the written communication requesting referral to such managers/executives, and either Party wishes to pursue its rights relating to such Dispute, then the Dispute will be subject to binding arbitration conducted in accordance with the then current rules of UNCITRAL. In such event: (1) the Parties shall appoint a sole arbitrator, who shall be knowledgeable in the field of communications and fluent in English; if an arbitrator is not jointly appointed within thirty (30) days after the reference to arbitration, the arbitrator shall be appointed in accordance with UNCITRAL rules; (2) the place of arbitration shall be Mumbai, India, and the law under which the arbitration is to be conducted shall be the laws set forth in this Section.”

(emphasis supplied)

13. It is not in dispute that the applicant by its Advocate's detailed notice dated 3 December 2018 recording the disputes which had arisen between the parties under the agreement, and as noted above, invoked the arbitration agreement as contained in clause 24(b) of the said

1 (2014) 11 Supreme Court Cases 560

2 (2007) 5 Supreme Court Cases 703

agreement and accordingly, suggested that Dr.Justice F.I. Rebello (Retd.) is nominated to be appointed as a sole arbitrator to adjudicate the disputes between the parties. This can be surely said to be a notice as per the arbitration agreement between the parties namely under the UNCITRAL rules. Article 3 of the UNCITRAL rules which provides for notice of arbitration reads thus:-

“Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to the other party or parties (hereinafter called the “respondent”) a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and contact details of the parties;

(c) Identification of the arbitration agreement that is invoked;

(d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) A brief description of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by

the arbitral tribunal.”

(emphasis supplied)

14. The respondent replied to the applicant's arbitration notice as issued in consonance to Article 3 above, by its Advocate's letter dated 31 December 2018 refusing to appoint Dr. Justice F.I. Rebello (Retd.) as a sole arbitrator and instead proposed appointment of Mr. Justice Deepak Verma (Retd.) as a sole arbitrator. This response of the respondent to the applicant's notice falls under Article 4 of the UNCITRAL arbitration rules which contemplates the response to a notice under Article 3 the response to include certain aspects as set out in paragraph 2(a) to 2(f).

Article 4 reads thus:-

“Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contract details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3(c) to (g).

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(d) Notification of the appointment of an arbitrator referred to in article 9 or 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant,

an indication of the amounts involved, and the relief or remedy sought;

(f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.”

(emphasis supplied)

15. At this stage, it is required to be noted that when the respondent replied to the arbitration notice, the respondent clearly did not exercise an option available to the respondent in regard to any of the aspects which are falling in paragraphs 2(a) to 2(f) which categorically includes a choice which was available to the respondent to make a proposal for designation of an appointing authority (referred Article 4(2)(b) as per Article 6 paragraph 1). Confronted with this approach of the respondent, the applicant rightly as per the procedure under UNCITRAL Rules, invoked Article 6 paragraph 1 by its Advocate's letter dated 4 January 2019 and appointed this Court as appointing authority. The relevant contents of Article 6 are required to be noted, which read thus:-

“Designating and appointing authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an

appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph (4), if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties."

16. It is clear from a plain reading of paragraph 1 of Article 6 that in the absence of an agreement on the choice of an appointing authority, a party may at any time propose the name or names of one or more

institutions or persons, “including” the Secretary-General of the Permanent Court of Arbitration at the Hague, “one of whom” would serve as appointing authority. Paragraph 2 of Article 6 contemplates a situation, only in a case when all parties have “not agreed” on the choice of an appointing authority within 30 days after a proposal is made in accordance with paragraph 1 has been received by all the parties, in such a situation, any party in that event may request the Secretary-General of the PCA to designate the appointing authority. The precondition being a non-agreement of the choice of an appointing authority within 30 days after a proposal is made in accordance with paragraph 1 of Article 6, and not otherwise. Clearly in the present case, this situation as contemplated by paragraph 2 of Article 6 of a non-agreement had not arisen. The respondent never objected to the applicant designating this Court as an appointing authority as per the agreement between the parties. Paragraph 1 of Article 6 is clear and it provides choice to the parties “to propose the name or names of one or more institutions or persons, including the Secretary-General as one of the persons who would serve as an appointing authority”. The respondent's reading of paragraph 1 of Article 6 that it is only the Secretary-General of the Permanent Court of Arbitration at the Hague who would be appointing authority, would clearly be an erroneous reading of paragraph 1 of Article 6. Such a reading is contrary to the

plain reading of paragraph 1 of Article 6, for the reason that it provides a choice to the parties to propose the name of one or more institutions, Secretary-General being one of the persons who can be an appointing authority. In fact paragraph (1) of article 6 recognizes the principle of party autonomy. In my opinion, the applicant acted completely in accordance with the requirement of Article 4 and Article 6 of the UNCITRAL Rules which provide choice to the parties to designate this Court as an appointing authority and which was never objected much less disputed by the respondent at any point of time and for the first time in the reply affidavit has raised such a contention as a defence and ex-facie contrary to paragraph (1) of article 6. This Court was thus validly designated as an appointing authority as per Article 4 and 6 of the UNCITRAL Rules as noted above and thus would have jurisdiction to appoint an arbitral tribunal under Section 11(6) of the ACA.

17. Considering the above circumstances, in my considered opinion, the submissions as urged on behalf of the respondent that the applicant has not adhered to the provisions of the arbitration agreement and/or acted in contrary to the UNCITRAL arbitration rules cannot be accepted.

18. In so far as the decisions as relied on behalf of the respondent are concerned, in my opinion, both these decisions are not applicable in the

facts of the present case. **Antrix Corporation Limited Versus Devas Multimedia Private Limited** (supra) was a case where the petitioner therein had invoked the jurisdiction under Section 11(4) read with Section 11(10) and 11(6) of the ACA after an appointment of the arbitrator was made by the ICC on invocation of the ICC procedure. It is in this context, the Supreme Court in paragraph 34 observed that it was not permissible for the petitioner having invoked provisions of ICC to take recourse to Section 11 of the ACA. It was thus held that once the provisions of the ICC Rules and arbitration were invoked by the respondent and the proceedings accordingly initiated, the same cannot be interfered with in a proceeding under the provisions of Section 11 of the ACA. This decision would thus not assist the respondent.

19. The respondent's reliance on the decision in **Iron & Steel Co. Ltd. Versus Tiwari Road Lines** (supra), would also not be relevant in the facts of the present case. This was a case where the respondent having agreed to the rules of Indian Council of Arbitration to be applied, had straightaway invoked the jurisdiction of the City Civil Court at Hyderabad (authority designated) in an application as made under Section 11 of the ACA. The said application came to be adjudicated by appointing a retired judicial officer to adjudicate the disputes between the parties. This order passed by the City Civil Court was questioned by

the applicant therein before the High Court and being unsuccessful before the High Court, had approached the Supreme Court. The contention as raised by the appellant (original respondent) was that once a procedure as agreed between the parties for the disputes to be resolved in accordance with the Rules of Arbitration of the Indian Council of Arbitration, an application under Section 11 of the ACA could not have been filed. It is in this context, the Supreme Court held and more particularly in paragraphs 6 to 10 and it was not open for the respondent therein to straightaway invoke the provisions of Section 11 for appointing an arbitral tribunal without taking recourse to the agreed procedure as per the rules of the Indian Council of Arbitration. Thus the facts of the said case are clearly uncomparable to the facts in hand. In the present case as noted above, the applicant has adhered to the procedure as agreed in the arbitration agreement. The arbitration agreement itself contemplates and provides that this Court can be designated as an appointing authority as specifically provided under Article 6(1). When such a choice was available to the applicant, there is nothing wrong for the applicant to approach this Court and invoke jurisdiction under Section 11 of the ACA.

20. In the light of the above discussion, the application needs to succeed. Resultantly, I propose to pass the following order:-

ORDER

(i) Mr. Justice Kurian Joseph, Former Judge of the Supreme Court of India, is appointed as prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the Long Form Procurement Agreement dated 2 September 2015;

(ii) The learned prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 20 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties including on merits of the disputes are expressly kept open;

(v) The application is disposed of in the above terms. No costs;

(vi) Office to immediately communicate this order to the learned sole Arbitrator by email as also by post on the following address:-

D-1/40, ground floor, "Vasant Vihar"
New Delhi 110 057
Phone No.0011 26150999
justicekurianjoseph@outlook.com

[G.S. KULKARNI, J.]