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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 74/2019**
NANDHI FOOD PRODUCTS PRIVATE LIMITED Petitioner
Through: Mr.Mohit Arora, Mr.Nitin Chahar, Advs.

versus

SSMP INDUSTRIES LIMITED Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **05.02.2019**

IA 1743/2019

Exemption allowed subject to all just exceptions.

Arb.P. 74/2019 & IA 1742/2019

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Purchase Orders for Alphanso Mango Pulp placed by the respondent on the petitioner.

2. Disputes having arisen between the parties, the same were referred to the Sole Arbitrator by the respondent vide letter dated 05.03.2018 in terms of the Arbitration Agreement between the parties.

3. The Arbitrator had given a disclosure statement under Section 12(1)(b) read with Sixth Schedule to the Act *inter alia* stating as under:

5	<i>Circumstances disclosing any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to your independence or impartiality (list out)</i>	<i>I have no past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts on the grounds as contemplated in Schedule 5 of Arbitration and Conciliation Act, 1996 as to my independence or impartiality.</i>
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4. On further disclosure being sought by the petitioner, the Arbitrator in his order dated 30.12.2018 has disclosed that all three arbitration proceedings in which he is functioning as an Arbitrator are involving the respondent.

5. Counsel for the petitioner based on the above two disclosure statements submits that the Arbitrator is liable to be removed and a new Arbitrator is to be appointed as the Arbitrator had intentionally made an incorrect disclosure in the first instance. He relies on the judgment of this Court in ***Dream Valley Farms Pvt. Ltd. & Ors. vs. Religare Finvest Ltd. & Ors.*** in Arb. P. No.635/2016 decided on 19.10.2016 to contend that in these circumstances, the party cannot be relegated to the remedy under Section 13 of the Act and this Court can appoint an Arbitrator in exercise of its jurisdiction under Section

11 of the Act.

6. I am unable to agree with the contention raised by the counsel for the petitioner. In the present case, the Arbitrator already stands appointed in accordance with the Arbitration Agreement between the parties. There is no allegation that the Arbitrator would be ineligible under the Seventh Schedule to the Act. In *HRD Corporation (Marcus Oil & Chemical Division) vs. Gail (India) Ltd.* (2018) 12 SCC 471, the Supreme Court has held that once the Arbitrator is appointed and there is no allegation against him under the Seventh Schedule of the Act, the party complaining of such Arbitrator has to necessarily approach the Arbitrator first under Section 13 of the Act and thereafter, if aggrieved of the decision of the Arbitrator, challenge the said order along with its challenge under Section 34 of the Act.

7. In *Antrix Corporation Ltd. vs. Devas Multimedia Pvt. Ltd.*, (2014) 11 SCC 560, the Supreme Court has further held that once the Arbitrator already stands appointed, the party to the Arbitration Agreement cannot file an application under Section 11 of the Act even if it has a grievance against the Arbitrator so appointed.

8. In view of the above, I find no merit in the present petition, and the same is dismissed, leaving it open to the petitioner to challenge the mandate of the Arbitrator, if so advised, in accordance with law.

NAVIN CHAWLA, J

**FEBRUARY 05, 2019
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