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

+ **ARB.P. 271/2021 & I.A. 2680/2021**

**M/S ASHUTOSH ENTERPRISES** ..... Petitioner  
Through: Mr. Anirudh Bhatia, Mr. Dhruv  
Nayar and Ms. Shreya Sethi, Advs.

versus

**INDIAN TRADE PROMOTION ORGANIZATION** ..... Respondent  
Through: Mr. Rajender Wali, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**ORDER (ORAL)**  
**22.02.2021**

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1. Clause 8 of the contract between the parties, which provides for dispute resolution, reads thus:

**“8. Dispute Resolution**

The Parties shall attempt in good faith to resolve any disputes or claims arising out of or in relation to this Agreement (“Difference”) promptly by negotiation between the Parties. In the event that the Parties fail to settle/resolve the disputes amicably within 30 days, then the same shall be referred to and settled by a sole Arbitrator to be appointed by CMD, ITPO. The Arbitration proceedings shall be conducted at New Delhi, Indian in English Language in accordance with the Indian Laws (both Substantive and Procedural) under the Arbitration & Conciliation Act, 1996 as amended and re-enacted from time to time. The arbitration award shall be final and binding on the Parties.”

2. It is apparent that Clause 8 is in the teeth of Section 12(5) of the Arbitration and Conciliation Act, 1996, read with the Seventh

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Schedule thereto and the judgment of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*<sup>1</sup>, *Bharat Broadband Network Ltd. v. United Telecom Ltd.*<sup>2</sup> and *TRF Limited v. Energo Engineering Projects Ltd.*<sup>3</sup>.

3. Accordingly, the letter dated 15<sup>th</sup> February, 2021, by the CMD of respondent-Indian Trade Promotion Organization, appointing the arbitrator is obviously not enforceable.

4. In view thereof, Mr. Rajender Wali, learned counsel for the respondent, fairly agrees to the appointment of an arbitrator by the court, but requests that the arbitrator may be someone other than the arbitrators suggested in the notice invoking arbitration issued by the petitioner.

5. Accordingly, in view thereof, this Court appoints Mr G. Tushar Rao, Advocate (Mobile No: 9810708121) as the arbitrator to arbitrate on the dispute between the parties.

6. The parties may contact the learned Arbitrator within 48 hours of receipt, by email, of a copy of this order.

7. The fees of the learned Arbitrator would be as per the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

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<sup>1</sup> 2019 SCC Online SC 1517

<sup>2</sup> (2019) 5 SCC 755

<sup>3</sup> (2017) 8 SCC 377

8. The learned Arbitrator would submit the requisite disclosure under Section 12(2) of the Arbitration and Conciliation Act, 1996 within a week of entering on the reference.

9. The petition stands disposed of.

**C. HARI SHANKAR, J.**

**FEBRUARY 22, 2021**

*dsn*

