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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1130/2023

MBL INFRASTRUCTURE LTD

..... Petitioner

Through: Ms Anusuya Salwan, Mr Rachit
Wadhwa and Ms Simran Sakunia,
Advs.

versus

rites LTD & ANR.

..... Respondents

Through: Mr G.S. Chaturvedi and Mr Virat
Singh, Advs. for RITES Ltd.
Mr Udit Malik, ASC for GNCTD
with Mr Vishal Chanda, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.03.2024

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1. In view of the order passed today in O.M.P. (T) (COMM.) 70/2023, the present petition being a petition under Section 11 of the Arbitration & Conciliation Act, 1996 has become infructuous.

2. The same is also covered by the judgment passed by the Hon'ble Supreme Court decided on 10.05.2013 in Arbitration Petition No. 20/2011 titled '*Antrix Corporation Ltd. v. Devas Multimedia P. Ltd.*'. The relevant paragraph reads as under:

"31. The matter is not as complex as it seems and in our view, once the Arbitration Agreement had been invoked by Devas and a nominee Arbitrator had also been appointed by it, the Arbitration Agreement could not have been invoked for a second time by the Petitioner, which was fully aware of the appointment made by the Respondent. It would lead to an anomalous state of affairs if the appointment of an Arbitrator once made, could be



questioned in a subsequent proceeding initiated by the other party also for the appointment of an Arbitrator. In our view, while the Petitioner was certainly entitled to challenge the appointment of the Arbitrator at the instance of Devas, it could not do so by way of an independent proceeding under Section 11(6) of the 1996 Act. While power has been vested in the Chief Justice to appoint an Arbitrator under Section 11(6) of the 1996 Act, such appointment can be questioned under Section 13 thereof. In a proceeding under Section 11 of the 1996 Act, the Chief Justice cannot replace one Arbitrator already appointed in exercise of the Arbitration Agreement.

It may be noted that in case of Gesellschaft Fur Biotechnologische Forschun GMBH Vs. Koprana Laboratories Ltd. & Anr. [(2004) 13 SCC 630], a learned Single Judge of the Bombay High Court, while hearing an appeal under Section 8 of the 1996 Act, directed the claims/disputes of the parties to be referred to the sole arbitration of a retired Chief Justice with the venue at Bombay, despite the fact that under the Arbitration Agreement it had been indicated that any disputes, controversy or claim arising out of or in relation to the Agreement, would be settled by arbitration in accordance with the Rules of Conciliation of the International Chamber of Commerce, Paris, with the venue of arbitration in Bombay, Maharashtra, India. This Court held that when there was a deviation from the methodology for appointment of an Arbitrator, it was incumbent on the part of the Chief Justice to assign reasons for such departure.”

3. Once an Arbitrator has been appointed, another petition for invocation of the arbitration clause will not lie.
4. For the said reasons, the petition is dismissed.

JASMEET SINGH, J

MARCH 12, 2024/sr