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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMM. ARBITRATION APPLICATION NO. 125 OF 2025

BBCL Secure Premises Pvt. Ltd. ...Applicant

Versus

Hindustan Petroleum Corporation Ltd. ...Respondent

Mr. Gaurav Srivastav a/w *Ms. Ravleen Sabharwal and Ms. Aarushi Yadav i/b RS Justicia Law Chambers for the Applicant.*

Advocate for the Respondent appeared but appearance not tendered.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 7, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an arbitrator in connection with the disputes and differences that are said to have arisen between the parties under a tender and a consequent Purchase Order dated August 20, 2013.

2. By a tender dated July 27, 2012, the Respondent, Hindustan Petroleum Corporation Limited awarded a contract to AGC Networks Limited, which evidently changed its name to Black Box Limited. The present Applicant is said to be an assignee of the rights of AGC Networks Limited and has raised disputes and differences pursuant to the arbitration agreement contained in Clause 15.13 of the tender conditions (found at Page Nos.132 and 133 of the Application). The Applicant has invoked arbitration by a notice dated August 28, 2024. The Respondent has replied to the

notice on September 26, 2024, wherein the Respondent has denied the claims made in the invocation notice. The Respondent has raised a fundamental issue, namely, that the assignment of rights has been done behind the back of the Respondent and it ought to have been approached before such assignment of the rights in respect of the contract for the Respondent to be bound by the arbitration agreement contained in the said tender.

3. This to my mind raises a clear capacity for the Respondent to file an application under Section 16 of the Act, whereby the arbitral tribunal should decide the arbitrability of the disputes. In the peculiar facts of this case, while allowing this Section 11 Application by making a reference to the arbitral tribunal, it is directed that the arbitrability of the disputes should be decided as preliminary issue upfront by the arbitral tribunal, so that the interests of the parties are well balanced and protected and unnecessary time is not wasted, should the arbitral tribunal reach a conclusion that the arbitration agreement would not bind the Respondent with the assignee of AGC Networks Limited.

4. Being satisfied that an arbitration agreement is in existence but taking into account the objection raised by the Respondent that the Respondent had a right to approve the counter-party prior to the assignment of rights of the Applicant, this aforesaid request to the Arbitral Tribunal, asking for the Section 16 Application to be decided first as a preliminary issue is being made. In these circumstances, the Section 11

Application is hereby ***finally disposed of*** in the following terms:-

A] Mr. Vishal Phal, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Address: 102, Gundecha Chambers, Nagindas Master Road,
Fort, Mumbai – 400 001.

Email: vishalphal@yahoo.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondent;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the

respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

4. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

5. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]