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

Decided on: 02nd November, 2022

+ ARB.P. 319/2017

CONSOLIDATED CONSTRUCTION CONSORTIUM LIMITED ..... Petitioner

Through: Mr. Anand Jha, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr. Rakesh Mittal, Standing Counsel.

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CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes arising between the parties under a Concession Agreement dated 14.03.2011 for "Development of Multilevel Automated Parking-cum- Commercial Complex at South Extension Part-I & II, New Delhi" ["the Agreement"]. The Agreement was awarded to the petitioner on 30.07.2010, pursuant to a tender issued by the respondent.

2. The petitioner relies upon Article 20 of the Agreement, entitled "Disputes", which reads as follows: -

> *"**Article 20: DISPUTES***
>
> *In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an event of Default any party shall refer the dispute, controversy or claim to the Commissioner, MCD.*
>
> ***Section 20.1 Mediation by Commissioner***
>
> *The Party that initially issued the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint a officer who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.*
>
> *(a) Within 10 days of receipt of the above documents, the other parties shall submit; (i) a description of the dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.*
>
> *(b) The officer appointed by MCD may call for such further documentary evidence and/or interview such persons, as it may deem necessary in order to reach a decision.*
>
> *(c) The officer appointed by MCD shall give notice to the parties of its decision within 20 days of receipt of the documents provided by the parties pursuant to subsection (b) and (c) above. The decision of the officer appointed by MCD shall be binding.*
>
> *(d) The officer appointed by the MCD should give decision in writing. The decision of the MCD shall be final and binding on the party.*
>
> ***Section 20.2 Performance during Dispute Resolution***
>
> *Pending the submission of a dispute, controversy or claim to the officer appointed by the MCD and thereafter until the final decision of the officer appointed by the MCD, as the case may be, the parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.*
>
> ***Section 20.3 Survival***
>
> *The provisions relating to indemnification contained in Section 15.2, intellectual property contained in Section 18, confidentiality contained in Section 19.1 and the dispute resolution provisions contained in this Article 20 shall survive the termination of this Agreement."*

3. Disputes having arisen between the parties, by a legal notice dated 01.07.2016, the petitioner called upon the respondent to pay a sum of ₹41,88,50,435/- with further interest or to appoint a neutral arbitrator to decide the disputes.

4. By a response dated 29.08.2016, the respondent disputed the existence of an arbitration clause.

5. The petitioner, however, reiterated its request for appointment of an arbitrator, by a legal notice dated 05.10.2016.

6. As the respondent did not accede to the request, the petitioner has approached this Court under Section 11 of the Act.

7. Notice was issued in the present petition on 15.05.2017, but the hearings were adjourned from time to time to await the decision of the Supreme Court in S.L.P.(C) 16913/2017 [*South Delhi Municipal Corporation vs. SMS Ltd*.], directed against the judgment of this Court dated 09.03.2017 in ARB.P. 793/2016 [*SMS Ltd. vs. South Delhi Municipal Corporation*].[1] It was noted in this Court's order dated 25.07.2017 that the Supreme Court, by an order dated 07.07.2017, had granted stay of the judgment of this Court in *SMS Ltd.*[2]. The said Special Leave Petition remains pending before the Supreme Court.

8. Although it is observed in some of the previous orders (including the order of a Coordinate Bench dated 25.07.2017 and an order of this Court dated 26.07.2022) that the clause in issue in *SMS*

[1] 2017 SCC OnLine Del 7414.
[2] Supra (note 1).

Ltd[3]. was identical to Article 20 of the Agreement in the present case, on further review, certain differences between the clauses were noticed. As the Court—and indeed, the parties—had until then proceeded on the basis that the clauses were identical, an opportunity was given to Mr. Rakesh Mittal, learned Standing Counsel for the respondent, who had also represented the respondent-SDMC in ARB.P. 793/2016, to clarify the position. At the next hearing, on 13.10.2022, Mr. Mittal confirmed that there were indeed differences between the two clauses. For the reasons discussed in greater detail hereinbelow, I am of the view that those differences are substantial, so as to render it necessary to examine the present case independently.

9. In the meanwhile, the Supreme Court has also delivered a judgment dated 22.11.2018 in Civil Appeal No. 11249/2018 arising out of S.L.P.(C) 23139/2016 [*South Delhi Municipal Corporation vs. SMS AAMW Tollways Pvt. Ltd.*].[4] The aforesaid appeal arose out of a decision of this Court dated 17.06.2016 in ARB.P. 475/2015 which also concerned a dispute resolution clause in a similar concession agreement of the Municipal Corporation of Delhi ["MCD"]. The Supreme Court, on an interpretation of the clause, reversed the judgment of this Court appointing an arbitrator under Section 11 of the Act. It is the undisputed position that the concerned clause in that case is substantially different to the present case.

[3] Ibid.
[4] (2019) 11 SCC 776.

10. I have, therefore, heard Mr. Anand Jha, learned counsel for the petitioner, and Mr. Mittal in detail.

11. Section 7 of the Act lays down the procedural or formal requirements on the basis of which the parties can claim the existence of an arbitration clause. There is no dispute in the present petition that those requirements are satisfied. The dispute is centered around the interpretation of the terms.

12. It is necessary to clarify at the outset the reasons which have led me to the conclusion that the present case would not be governed by *SMS Ltd.*[5] Although there is undoubtedly a great deal of overlap between the clauses in question in the two cases, there is also significant difference between them, which will be apparent from the following table: -

Article 20 of the concession agreement dated 20.04.2012 between SMS Ltd. vs. SDMC	**Article 20 of the Agreement dated 14.03.2011 between the present petitioner and SDMC**
ARTICLE 20: DISPUTES In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an event of Default any party shall refer the dispute, controversy or claim to the	ARTICLE 20: DISPUTES In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an event of Default any party shall refer the dispute, controversy or claim to the Commissioner, MCD.

[5] Supra (note 1).

Commissioner, MCD.	
Section 20.1 Mediation by Commissioner The Party that initially issue the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint a officer from within or outside MCD who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.	Section 20.1 Mediation by Commissioner The Party that initially issued the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint a officer who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.
	(a) Within 10 days of receipt of the above documents, the other parties shall submit; (i) a description of the dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position. **(b) The officer appointed by MCD may call for such further documentary evidence and/or interview such persons, as it may deem necessary in order to reach a decision.** **(c) The officer appointed by**

	MCD shall give notice to the parties of its decision within 20 days of receipt of the documents provided by the parties pursuant to subsection (b) and (c) above. The decision of the officer appointed by MCD shall be binding. (d) **The officer appointed by the MCD should give decision in writing. The decision of the MCD shall be final and binding on party.**
Section 20.2 Performance during Dispute Resolution Pending the submission of a dispute, controversy or claim to the officer appointed by the MCD and thereafter until the final decision of the officer appointed by the MCD, as the case may be, the parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.	Section 20.2 Performance during Dispute Resolution Pending the submission of a dispute, controversy or claim to the officer appointed by the MCD and thereafter until the final decision of the officer appointed by the MCD, as the case may be, the parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.
Section 20.3 Survival The provisions relating to indemnification contained in Section 15.2, intellectual property	Section 20.3 Survival The provisions relating to indemnification contained in Section 15.2, intellectual property

contained in Section 18, confidentiality contained in Section 19.1 and the dispute resolution provisions contained in this Article 20 shall survive the termination of this Agreement.	contained in Section 18, confidentiality contained in Section 19.1 and the dispute resolution provisions contained in this Article 20 shall survive the termination of this Agreement.

The sub-clauses which are printed in bold above are part of Article 20 in the present case, but were not incorporated in the agreement in *SMS Ltd.*[6], which is in issue before the Supreme Court in the pending Special Leave Petition.

13. Clauses (a) to (d), which are incorporated in Article 20 of the Agreement, provide for an opportunity to each side to submit its case including documentary evidence, and for "interview" of persons by the concerned officer. The decision is expressly stated to be "final and binding" by virtue of Article 20 (d).

14. These differences are significant in the context of the decisions of the Supreme Court on the characteristics of an arbitration agreement.

15. The attributes of an arbitration agreement have been laid down by the Supreme Court in *K.K. Modi vs. K.N. Modi & Ors.*[7], in the following terms: -

[6] Ibid.
[7] (1998) 3 SCC 573.

"17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,

(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

18. The other factors which are relevant include, whether the agreement contemplates that the tribunal will receive evidence from both sides and hear their contentions or at least give the parties an opportunity to put them forward; whether the wording of the agreement is consistent or inconsistent with the view that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute according to law.

19. In Russell on Arbitration, 21st Edn., at p. 37, para 2-014, the question how to distinguish between an expert determination and arbitration, has been examined. It is stated,

"Many cases have been fought over whether a contract's chosen form of dispute resolution is expert determination or arbitration. This is a matter of construction of the contract, which involves an objective enquiry into the intentions of the parties. First, there are the express words of the disputes clause. If specific words such as 'arbitrator', 'arbitral tribunal', 'arbitration' or the formula 'as an expert and not as an arbitrator' are used to describe the manner in which the dispute resolver is to act, they are likely to be persuasive although not always conclusive…. Where there is no express wording, the court will refer to certain guidelines. Of these, the most important used to be, whether there was an 'issue' between the parties such as the value of an asset on which they had not taken defined positions, in which case the procedure was held to be expert determination; or a 'formulated dispute' between the parties where defined positions had been taken, in which case the procedure was held to be an arbitration. This imprecise concept is still being relied on. It is unsatisfactory because some parties to contract deliberately choose expert determination for dispute resolution. The next guideline is the judicial function of an arbitral tribunal as opposed to the expertise of the expert; …. An arbitral tribunal arrives at its decision on the evidence and submissions of the parties and must apply the law or if the parties agree, on other consideration; an expert, unless it is agreed otherwise, makes his own enquiries, applies his own expertise and decides on his own expert opinion…."

20. The authorities thus seem to agree that while there are no conclusive tests, by and large, one can follow a set of guidelines in deciding whether the agreement is to refer an issue to an expert or whether the parties have agreed to resolve disputes through arbitration.

21. Therefore our courts have laid emphasis on (1) existence of disputes as against intention to avoid future disputes; (2) the tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions

made by the parties before it; and (3) the decision is intended to bind the parties. Nomenclature used by the parties may not be conclusive. One must examine the true intent and purport of the agreement. There are, of course, the statutory requirements of a written agreement, existing or future disputes and an intention to refer them to arbitration. (Vide Section 2 Arbitration Act, 1940 and Section 7 Arbitration and Conciliation Act, 1996.)"

16. In *Jagdish Chander vs. Ramesh Chander & Ors.*,[8] the Supreme Court relied upon its earlier judgments in *K.K. Modi*[9], *Bharat Bhushan Bansal vs. U.P. Small Industries Cropn. Ltd.*[10], *Bihar State Mineral Development Corpn. & Anr. vs. Encon Builders (I) (P) Ltd.*[11], and *State of Orissa vs. Damodar Das*[12] to distill the following principles in this regard: -

"8.

xxxx xxxx xxxx

We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:

(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

[8] (2007) 5 SCC 719.
[9] Supra (note 7).
[10] (1999) 2 SCC 166.
[11] (2003) 7 SCC 418.
[12] (1996) 2 SCC 216.

(ii) Even if the words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.

(iv) But mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement. Such clauses

> *merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future."*

17. Applying the principles to the present case, the first, and perhaps the most glaring, fact is that the word "*arbitration*" does not appear in Article 20 of the Agreement at all. Instead, the heading of Section 20.1 specifically refers to "*Mediation by Commissioner*". This, however, cannot be dispositive of the matter. Paragraphs 8(ii) and (iv) of *Jagdish Chander*[13] reflect the general principle that, in construction of a contractual clause, the Court should be guided by the substance of the agreement between the parties rather than by the nomenclature employed. For this purpose, reference may also be made to paragraph 21 of *K.K. Modi*[14]. In *Punjab State and Ors. vs. Dina Nath*[15], this Court held that a clause which provided for reference of disputes to the Superintending Engineer of one of the parties, whose decision would be "*final and acceptable/binding on both the parties*" constitutes an arbitration clause, despite the absence of any express reference to "*arbitration*". Examples of converse cases-where contractual provisions have been held not to constitute an arbitration clause despite the use of the word "*arbitration*" - can be found in the judgments of the Supreme Court in *Mahanadi Coalfields Ltd. vs.*

[13] Supra (note 8).
[14] Supra (note 7).
[15] (2007) 5 SCC 28.

IVRCL AMR Joint Venture[16] and the recent decision of this Court in *Foomill (P) Ltd. vs. Affle (India) Ltd.*[17].

18. In the context of the aforesaid judgments, the following features of Article 20 of the Agreement in the present case must be noted:-

a. The Agreement is in writing.

b. The jurisdiction of the designated authority derives from the consent of the parties, as reflected by the Agreement.

c. The reference of disputes, controversies, or claims to the Commissioner, MCD can be made by any party.

d. The reference is mandatory, inasmuch as the opening clause of Article 20 uses the words *"shall refer"*.

e. The reference is of existing disputes.

f. The decision-making authority is obliged to take evidence from both sides and to interview such persons as it may deem necessary in order to reach a decision. Both sides are to be given an opportunity to adduce evidence and put forth their contentions. Parties have thus been given equal opportunity to put forth their case before the authority.

g. The substantive rights of the parties are to be determined by the concerned officer.

[16] 2022 SCC OnLine SC 960.
[17] 2022 SCC OnLine Del 843 (paragraph 6).

h. Sections 20.1 (c) and (d) assert that the decision shall be final and binding.

i. There is nothing to suggest that the decision of the authority is not intended to be enforceable in law.

j. Article 20 does not contain any of the elements mentioned in the aforesaid judgments, which may detract from its character as an arbitration agreement.

19. Looking to these features of Article 20 of the Agreement, I am of the view that it possesses the attributes of an arbitration agreement, despite the use of the word "mediation". In fact, many of the features (e.g. recording evidence, determination of rights, and irrelevance of mutual agreement to the final resolution of the dispute), are *prima facie* inconsistent with the label of "mediation".

20. I turn now to the judgment of the Supreme Court in *SMS AAMW*[18], which concerns a clause in a similar concession agreement of the respondent herein. The relevant clauses of the agreement dated 14.05.2011, which were being interpreted in that case, are as follows: -

> *"16. Dispute Resolution*
> *16.1 Except where otherwise provided in the Agreement, all questions and disputes in any way arising out of or relating to the Agreement shall be dealt with as mentioned below.*
> *16.2 In the event the contractor considers any work demanded of it as being outside the requirements of the Agreement, or disputes any record or decision given in writing by the competent officer in any matter in connection with or arising out of the Agreement, to be unacceptable, it shall promptly within [15] days request the competent officer in writing to give his instructions or decision in*

[18] Supra (note 4).

respect of the same. Thereupon, the competent officer shall give his written instructions or decision within a period of [30] days from the receipt of the contractor's letter.
16.3 If the competent officer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the competent officer, the contractor may, within [15] days of receipt of the competent officer's instructions or decision, appeal to the Commissioner who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of its appeal. The Commissioner shall give his decision in writing within [30] days of receipt of contractor's appeal which shall be acceptable to the contractor."
xxxx xxxx xxxx

"20. Miscellaneous Provisions
20.1 Governing Laws and Jurisdiction
(a) xxxx xxxx xxxx
(b) All disputes arising out of this Agreement shall be subject to sole and exclusive jurisdiction of the courts of Delhi only."

21. From a perusal of the aforesaid judgment of the Supreme Court, it is clear that the Court's finding that the said clause is not an arbitration clause is predicated on the following factors: -

a. The Court found that the proceedings before the Commissioner are described in Clause 16.3 as an *"appeal"*, and also found that the said procedure was indeed an appeal. The Court has thus proceeded not merely on the use of the word *"appeal"*, but on the substantive construction of the provision as an appellate provision.[19]

[19] Paragraphs 19,20,25, and 26.

b. The Court has noticed that the provision was liable to be invoked only by the contractor and not by the competent officer of the MCD.[20]

c. The Court has found that the Commissioner and the authority nominated by the Commissioner were not enjoined to act judicially, which would involve a consideration of the case of both sides.[21]

22. In the present case, in the light of Article 20 of the Agreement, these deficiencies do not arise. It is clear that *either party* can refer disputes to the Commissioner, that the other party would have an opportunity to meet the case with documentary evidence, that the decision-making authority can call for further documentary evidence and also interview such persons as it may deem necessary, and that the decision must be communicated to both sides, which would be final and binding upon them.

23. Looking at a few other judgments to the contrary, I find the reasoning to be based upon factors which are inapplicable to the present case: -

a. In *State of Orissa & Ors. vs. Bhagyadhar Dash*[22], the Supreme Court found that the decision of the concerned authority was not made binding on either party, and did not provide for a

[20] Paragraphs 19,20,21, and 22.
[21] Paragraphs 26 and 27.
[22] (2011) 7 SCC 406.

procedure where the authority was to act judicially after considering the submissions of the parties.

b. In *Karnataka Power Transmission Corpn. Ltd. & Anr. vs. Deepak Cables (India) Ltd.*[23], similarly, the Supreme Court found that the clause did not require the concerned authority to act judicially by following the principles of natural justice, or to consider the submissions of both the parties. It was provided in the clause that the decision would be only until the completion of the works.

c. In *Mahanadi Coalfields Ltd.*[24], although the concerned clause of the agreement was entitled *"Settlement of Disputes/Arbitration,"* the Court found no provision for a reference in the clause thereof.

d. In the judgment of this Court in *Foomill*[25] also, although the word *"arbitration"* was used in the heading of the clause, no substantive provision in this regard was engrafted in the agreement.

24. These decisions being inapplicable to the present case, I am of the view that Article 20 of the Agreement constitutes an arbitration agreement. As there is no other dispute raised by Mr. Mittal with regard to the appointment of an arbitrator, the disputes are liable to be referred to arbitration.

[23] (2014) 11 SCC 148.
[24] Supra (note 16).
[25] Supra (note 17).

25. Although the clause in question provides for reference of disputes to the Commissioner of the respondent, who is empowered to nominate an officer to render a decision, such a course is admittedly indispensable in the context of the prevailing jurisprudence regarding unilateral appointment of an arbitrator. In the course of hearing on 13.10.2022, learned counsel for the parties submitted that, in the event the petition is to be allowed, the disputes may be referred to arbitration under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"].

26. In view of the aforesaid, the petition is disposed of with the following directions: -

a. The disputes between the parties under the Concession Agreement dated 14.03.2011 are referred to the arbitration of Hon'ble Ms. Justice Indira Banerjee, former Judge, Supreme Court of India [Tel: +91-9560808777].

b. With the consent of learned counsel for the parties, the arbitration will be conducted under the aegis of the DIAC and will be governed by its Rules, including as to the remuneration of the learned arbitrator.

c. The learned arbitrator is requested to make a declaration in terms of Section 12 of the Act prior to entering upon the reference.

27. All rights and contentions of the parties on the merits of the disputes between them are left for adjudication by the learned arbitrator.

28. The petition stands disposed of in the aforesaid terms.

PRATEEK JALAN, J.

NOVEMBER 02, 2022
'Bhupi'