IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION APPLICATION (L) NO.28026 OF 2021

TLG India Pvt. Ltd. .. Applicant

Versus

Rebel Foods Pvt. Ltd. .. Respondent

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Mr.Dushyant Krishnan for the Applicant.

Mr.Piyush Raheja with Mr.Akash Mehta and Mr.Aditya i/b Mansukhlal Hiralal & Company for the Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 09th JANUARY, 2023

JUDGMENT :-

1. The application filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeks an appointment of the Sole Arbitrator for resolving the disputes that have arisen between the parties out of the contract of Media Agency.

Vide Letter of Appointment (LOA) dated 13/04/2015, the applicant was appointed as an Advertising Communication Partner by the respondent. In furtherance of the of the said arrangement, invoices were raised by the applicant, in accordance with clause No.3 of the LOA, but the applicant allege that the respondent, though never raised any dispute in respect to the services provided or invoices raised, failed to make the payments in terms of the Agreement. As per the applicant, after adjusting all the payments made by the

respondent, an amount of Rs.1,53,01,864/- is payable by the respondent.

In the wake of the aforesaid, applicant addressed a notice to the respondent on 09/11/2020 invoking arbitration agreement and, since, the respondent refused to accede to the request, the application has been filed under Section 11, seeking appointment of the Arbitrator in exercise of powers conferred upon this Court.

2. Heard learned counsel Mr.Dushyant Krishnan for the Applicant and the learned counsel Mr.Piyush Raheja for the respondent.

Mr.Raheja, the counsel for the respondent, has opposed the relief sought in the application, by raising a point of limitation. His specific submission is, the Court may refuse to make reference under Section 11 in rare and exceptional cases, where the claims are ex-facie time barred, which make it manifest that there is no subsisting disputes. He has placed reliance upon the decision of the Hon'ble Apex Court in the case of ***Bharat Sanchar Nigam Ltd. & Anr. Vs. M/s.Nortel Networks India Pvt. Ltd.***[1] and another decision in the case of ***CLP India Private Limited Vs. Gujarat Urja Vikas Nigam Limited & Anr.***[2].

Relying upon the aforesaid decision, Mr.Raheja would make me run through the list of dates and events involved and he would submit that the applicant provided it's services to the respondent in terms of the LOA from November 2015 to March

1 Civil Application No.843-844/2021 decided on 10/03/2021
2 (2020) 5SCC 185

2015 and as per the case of the applicant, it raised various invoices. He would submit that with this arrangement between the parties, a demand notice was sent on 27/04/2020, raising a demand of Rs.1,53,01,864/- alongwith interest, which was countered at the end of the respondent on 11/05/2020. Mr.Raheja would submit that the claim raised by the applicant after gap of four years, is ex-facie time barred and, therefore, this Court shall not entertain the application, seeking appointment of the Arbitrator.

3. In the wake of the preliminary objection, being raised about the maintainability of the application, seeking exercise of power under sub-section (6) of Section 11 of the Act, I will have to analyse, whether the proposition of law emerging from the authorities cited by the counsel for the respondent, is applicable to the present case, to create an effect that the claim of the applicant is ex-facie time barred.

4. The Hon'ble Apex Court in the case of ***Bharat Sanchar Nigam Ltd.(BSNL) (supra)***, was confronted with peculiar facts, where BSNL had invited bids for planning, engineering, supply, insulation, testing and commissioning of GSM based cellular mobile network in the southern region. The respondent company-Nortel was awarded the purchase order and on completion of the works, BSNL deducted/withheld an amount of Rs.99,70,93,031/- towards liquidated damages and other levies. Nortel, vide it's communication dated 13/05/2014 raised a claim for payment of the said amount, which was

rejected by BSNL on 04/08/2014. After a period of over 5 ½ years, Nortel vide letter dated 29/04/2020 invoked the arbitration clause and requested for appointment of an independent arbitrator, by contending that the dispute of withholding the amount, would fall within the ambit of arbitrable dispute.

BSNL raised an objection to the request on the ground that the case has already been closed on 04/08/2014 and as per Section 43 of the 1996 Act, the notice invoking arbitration was time barred. Thereupon, Nortel filed an application under Section 11 of the 1996 Act before the Kerala High Court for appointment of an arbitrator and the High Court referred the dispute to arbitration. The review petition filed by BSNL before the High Court was dismissed, which resulted in BSNL approaching the Hon'ble Apex Court. In the peculiar facts arising, the Apex Court formulated two points that arose for consideration, namely, (i) the period of limitation for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996, and (ii) whether the Court may refuse to make the reference under Section 11 where the claims are ex-facie time barred.

By analysing the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time, the Hon'ble Apex Court proceeded to decide the two points, which fell for it's consideration.

5. The Apex Court specifically observed that Section 11 does not prescribe any time period for filing an application

under sub-section (6) for appointment of an arbitrator and, therefore, Section 137 of the Limitation Act, 1963 would be liable to be invoked, which is in form of a residuary clause prescribing three years as period of limitation.

Their Lordship distinguished between the period of limitation for filing a petition, seeking appointment of an arbitrator and the period of limitation applicable to the substantive claim made in the underlying commercial contract and held that the limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator. Referring to various decisions of the High Court, it arrived at the conclusion that the application filed by Nortel was within the limited prescribed under Section 137 of the Limitation Act, since it was filed within a period of three years of rejection of request for appointment of an arbitrator.

6. Deliberating upon the second issue, which arose for determination, it was recorded that the issue of limitation goes to the maintainability or admissibility of the claim, which is to be decided by the arbitral tribunal, and on assertion that a claim is time barred or prohibited until some conditions are fulfilled, is a challenge to the admissibility of that claim, and not a challenge to the jurisdiction of the arbitrator to decide the claim itself. As regards the admissibility of the claim, it was categorically held that it shall be decided by the arbitral tribunal as a preliminary issue, or at the final stage after the evidence is led. After exhaustively referring to its three-judge

Bench in ***Vidya Drolia Vs. Durga Trading Corporation***[3], the following observation is recorded.

> "While exercising jurisdiction under Section 11 as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time barred and dead, or there is no subsisting dispute.

Paragraph 148 of the judgment reads as follows :

> "148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. <u>The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute.</u> All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)], it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen."
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> (emphasis supplied)

37. The upshot of the judgment in ***Vidya Drolia*** is affirmation of the position of law expounded in ***Duro Felguera*** and ***Mayavati Trading***, which continue to hold the field. It must be understood clearly that ***Vidya Drolia*** has not re-surrected the pre-amendment position on the scope of power as held in ***SBP & Co. v. Patel Engineering*** (supra).

It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal."

3 (2021)2 SCC 1

Applying the aforesaid proposition to the facts in hand, the Apex Court held as under :-

> "38. Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time barred by over 5 ½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 04.08.2014. The notice of arbitration was invoked on 29.04.2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable Section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation."

7. Further observations of the Apex Court on the issue is also relevant and I deem it expedient to reproduce the same.

> "39. The present case is a case of deadwood / no subsisting dispute since the cause of action arose on 04.08.2014, when the claims made by Nortel were rejected by BSNL. The Respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the Final Bill by making deductions.
>
> In the notice invoking arbitration dated 29.04.2020, it has been averred that:
>
> > " Various communications have been exchanged between the Petitioner and the Respondents ever since and a dispute has arisen between the Petitioner and the Respondents, regarding non payment of the amounts due under the Tender Document."
>
> The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that : "where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." There must be a clear notice invoking arbitration setting out the "particular dispute" (including claims /

amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

In the present case, the notice invoking arbitration was issued 5 ½ years after rejection of the claims on 04.08.2014. Consequently, the notice invoking arbitration is *ex facie* time barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case."

The conclusions were drawn in para 40 to the following effect :-

"Accordingly, we hold that :

(i) The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator;

It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings;

(ii) In rare and exceptional cases, where the claims are ex facie time barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference."

8. Another decision in the case of ***CLP India Private Limited (supra)***, the following observations are made by the Apex Court :-

"29. The next question is whether the GERC and APTEL fell into error in granting restricted refund calculable for the 3 year period prior to Gujarat Urja's application. The concurred findings on this aspect, in the opinion of this Court, are reasonable. There is merit in CLP's submission that the earliest point in time, when the cause of action arose, was in May 1996, when Gujarat Urja rejected its contention that incentive was payable in terms of the PPA, notwithstanding the Notification of 6.11.1995. Despite this stated position, meetings continued to be held and, what is more, incentive amounts, were paid to CLP. No doubt, no document conclusively stated that CLP's claim was accepted. We do not find any merit in the submission of Gujarat Urja that the issue was kept alive, due to a series of communications. In this regard, APTEL's findings about inapplicability of Section 18 of the Limitation Act, are correct. There was no admission on the part of CLP, at least of the kind, that extended the time for preferring an application for recovery of excess payments. It has been

consistently ruled by this court that repeated letters, or exchange of communications, do not extend the period of limitation, provided by law."

9. The position of law that ensue from the above decision, clearly emerges, that it is in rare and exceptional cases, where the claim is ex-facie time barred, making it manifest that there is subsisting dispute, the Court may refuse the reference, though the issue of claim being time barred, being permitted to be raised before the arbitral tribunal, since it concerns the "admissibility" of the claim, which shall be adjudicated as a preliminary issue or at the final stage, after the evidence is led by the parties.

10. Keeping in mind, the aforesaid proposition of law emerging, I have marshalled the facts involved in the present application, seeking appointment of an arbitrator.

The applicant and the respondent entered into an agreement on 13/04/2015, when the respondent appointed the applicant as it's advertising agency. Under the agreement, the applicant completed the work assigned to it and provided services to the respondent from November 2015 to March 2016 and raised various invoices in accordance with Clause 3 of the LOA. Since the payments were not made, the applicant addressed various E-mails/communications to the respondent to clear it's accumulated outstanding dues. A meeting was even held at the office of Advertising Agencies Association of India (AAAI) on 29/09/2016, wherein it is agreed between the parties that the respondent shall pay an amount of

Rs.4,00,00,000/- to the applicant and this statement was honoured by making the payment, which was an outcome of the meeting held under the aegis of AAAI. Immediately on 17/11/2017, the applicant again forwarded it's request to the respondent to pay the balance outstanding amount, which was responded on 20/11/2017, by the respondent expressing willingness therein to amicably resolve the issue.

Pertinent to note that there is no denial of the claim by the respondent and the impression given was that it is unable to make the payment on account of certain difficulties posed, but when the respondent failed to clear the outstanding dues, the applicant forwarded a demand notice on 27/04/2020 raising a demand of Rs.1,53,01,864/- along with the interest at the rate of 18% p.a.. On 11/05/2020, the respondent responded, without prejudice and for the first time, it attributed incompetency to the applicant and communicated that various instances pertaining to incompetency and irregularities in billing and mis-reporting of transaction have been observed, but no solution was provided. It also staked claim of suffering heavy financial losses due to the incompetency of the applicant and alleged that the demand of made by the applicant is frivolous and also alleged that it's conduct has caused irreparable damage to it's goodwill.

For the first time, the respondent specifically asserted that the demand of the applicant is frivolous and, therefore, denied. Pertinent to note that the language of incompetency and atrocious behaviour of the applicant was never spoken before and it is only when the balance amount was claimed by the applicant, the respondent responded with a vehemence on

11/05/2020. The applicant responded to the same on 23/06/2020, denying the allegations and specifically asserting as under :-

> "You have effectively acknowledged and admitted to all the Service and effectively so made use of the Work Product that forms part of the Services rendered by the Agency. More egregiously you have attempt to justify your high handed behaviour after having consumed all the Service to the best of your interest. Furthermore audaciously so in the Reply your callous disregard to fulfill your obligations adds to your legal malice. The emails are enclosed herein for your ready reference."

11. The respondent, again addressed a communication dated 07/07/2020, once again denying it's liabilities and responsibilities towards the applicant and this constrained the applicant to invoke arbitration on 09/11/2020, which was refuted on 07/12/2020, by a clear refusal to accord consent to the appointment of an arbitrator. It is in these sequence of events, it has to be ascertained, whether the claim staked by the applicant is ex-facie time barred.

12. The law of limitation is based on the maxim, "*vigilantibus non dormientibus jura subveniunt*" which means, "law serve the vigilant, not those who sleep". The Halsbury's Laws of England, state the objectives of the law of limitation as under :-

> "The courts had expressed atleast three different reasons, supporting the existence of the statute of limitation i.e. (a) the long dormant claims have more of cruelty than justice in them; (b) that the defendant might have lost the evidence to dispute a stale claim; and (c) that persons with good causes of action should pursue them".

13. Seeking adjudication of claims after a long gap of time definitely causes more injustice than justice, particularly when certain rights are vested in the parties and it would become greatly impossible to dislodge these rights.

The Arbitration is not an exception to the principle and when the enactment on the subject is perused, it can be seen that the Limitation Act, 1963 is made applicable to arbitrations, as it applies to the proceedings in a court of law, as specifically provided by Section 43(1) of the Act of 1996. The arbitration proceedings are initiated, when a notice of invocation is communicated to the other party, amounting to commencement of arbitration proceedings. Another mode through which the arbitration proceedings are set into motion is institution of an application under Sections 8 or 11 of the Arbitration and Conciliation Act, 1996 where, an arbitration agreement exists between them.

One question, therefore, arises is, whether there is a period of filing an application under Section 11 of the Arbitration and Conciliation Act and this issue was specifically recognised by the Hon'ble Apex Court in the case of ***BSNL (supra)*** and came to be answered by referring to various authoritative pronouncements with a conclusion, being derived that if an application under Section 11 is to be filed in a Court of law and, since, no specific Articles of the Limitation Act, 1963 applies, the residual Article would become applicable, giving rise to an inference that the period of limitation to file an application under Section 11, is three years from the date of refusal to appoint the arbitrator or on expiry of 30 days, whichever is earlier. Taking note of the fact that

this period of three years would be an unduly long period and it would defeat the very object of the Act, which is enacted for expeditious resolution of commercial dispute, the Arbitration and Conciliation Act, 1996 has been amended on two occasions i.e. in 2015 and 2019, to provide further time limits to ensure that the arbitration proceedings are conducted and concluded expeditiously.

Section 29A of the Act prescribe the limitation for the arbitral tribunal to conclude the proceedings and in view of the legislative intent, an opinion was expressed in ***BSNL (supra)*** that it would be necessary for Parliament to effect an amendment to Section 11 prescribing the specific period of limitation within which a party may move before the Court for making an application for appointment of arbitrator under Section 11.

14. Another question, distinct than the one put to rest by the aforesaid authoritative pronouncement is, whether while entertaining a claim by the arbitral tribunal, it can be declined on the ground that it is time barred or a dead one, which do not warrant its consideration.

The thin line of distinction, whether there is a delay in initiating of arbitration and whether the claim to be adjudicated by the arbitrator was barred by lapse of time, was duly identified in the case of ***Union of India Vs. L.K.Ahuja & Co.***, where an application was made to the Court for appointment of an Arbitrator in the year 1976, after denial of the request by the respondent in the same year. However, the

claim which is anticipated to be referred for arbitration was in relation to the work, which was completed in the year 1972. In this background, the Hon'ble Apex Court observed as under :-

> "In view of the well-settled principles we are of the view that it will be entirely wrong to mix-up the two aspects, namely, whether there was any valid claim for reference under Section 20 of the Act and, secondly, whether the claim to be adjudicated by the arbitrator, was barred by lapse of time. The second is a matter which the arbitrator would decide unless, however, if on admitted facts a claim is found at the time of making an Order under Section 20 of the Arbitration Act, to be barred by limitation."

15. While the limitation period for filling a petition, seeking appointment of an arbitrator or reference or disputes to the arbitration, is to be examined by the Court, the limitation aspect of the substantive claims is to be looked into by the arbitral tribunal and not by the Court. The only exception being, if the claim to be referred to arbitration is hopelessly barred by limitation and this should be apparent from the admitted facts and documents. There may be a situation where a petition may be filed within limitation because it was filed within three years of arising out of the dispute, however, whether main claim is time barred or not is an issue on merits, to be decided in arbitration proceedings.

In contrast, if on admitted facts it is noticed that the claims are clearly barred by limitation at the time of passing of an order under Section 11, then there need not be reference of the dispute because that may not survive in it's entitlement, necessarily conveying that the claim is dead one.

Now, with the development of law of arbitration, with amendment being brought in Section 11, the Court while considering an application for appointment of arbitrator must

confine itself to the question, whether the arbitration agreement exists or not and need not go into any other aspect, however, the moot question, which arises is whether the Court would simply ignore that the claim which is sought to be referred for arbitration is a dead claim, hopelessly barred by limitation and there is nothing to be referred to the arbitration and whether the Court may refuse an appointment on this ground.

16. This line of thinking is taken ahead in ***BSNL (supra)*** and I have extensively quoted the observations made by Hon'ble Ms.Justice Indu Malhotra (as she was then), as she has catched the real essence of the distinction by holding that the issue of limitation goes to the maintainability or admissibility of the claim, which is to be decided by the arbitral tribunal, but at the same time, while exercising jurisdiction under Section 11, as a judicial forum, the Court may exercise the prima facie test to screen and knock down ex-facie meritless, frivolous and dishonest litigation. In cases, though limited where a claim is found to be ex-facie time barred, or the dispute is non arbitratble, the Court may refuse such a reference, but the principle that has recently emerged through ***Vidya Drolia (supra)*** is to refer the dispute, when in doubt. It is only when the claims are found to be ex-facie time barred manifesting non existence of the dispute, a reference may be refused and, therefore, it will have to be discerned, whether a particular case which is to be adjudicated by the arbitral tribunal is so.

17. The reliance upon the proposition flowing from ***BSNL***

(supra) will have to be read in the light of it's facts. In the case in hand, the Hon'ble Apex Court has noted that the claims are ex-facie time barred by over 5 ½ years, as Nortel did not take any action whatsoever after the rejection of it's claim by BSNL on 04/08/2014 and the arbitration was only invoked on 29/04/2020 without any averment of any intervening facts, which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Holding that mere exchange of letters or settlement discussions, do not bring the dispute within limitation, when the final bill is rejected by making deductions or otherwise, reference was refused.

But, in the present case, the sequence of events to which I had referred to in great detail, do not make a case worst than Nortel. In the present case, the applicant provided services in term of the LOA and raised the invoices, with no objection being raised at the instance of the respondent. However, since the amount due and payable remained unpaid against the invoices, intervention of AAAI was sought and it is immediately thereafter, the respondent made over a sum of Rs.Four Crore towards partial discharge of it's liability. Thereafter, the applicant persuaded the respondent to clear the balance amount and the respondent expressed its willingness to amicably resolve the issue by it's E-mail dated 20/11/2017, but failed to honour it's commitment and this constrained the applicant to raise a demand for payment of sum of Rs.1,53,01,864/- alongwith interest at the rate of 18%. The respondent once again denied the liability to pay the outstanding and the communication exchanged between the

parties reveal that there was no refusal to make the payment and for the first time, by responding to the notice of the applicant on 11/05/2020, the respondent raised a doubt about the competency of the applicant and denied it's liability towards the outstanding amount. The refusal to discharge the liability, thus surfaced for the first time through E-mail dated 11/05/2020 and after this event, the applicant invoked the arbitration on 09/11/2020, as the dispute arose when the respondent denied the liability asserted by the applicant under the LOA.

This surely is not a case of a dead claim, hopelessly barred by limitation and it is not of the category contemplated in the case of ***Vidya Drolia (supra)***, where the test has been laid down in the following words :-

> "The court as the judicial forum of the first instance can exercise prima facie test jurisdiction to screen and knockdown ex facie meritless, frivolous and dishonest litigation. Limited jurisdiction of the courts ensures expeditious, alacritous and efficient disposal when required at the referral stage."

The indication being loud and clear that if the Court at the referral stage find the claim to be ex-facie time barred and dead, it would not make a reference at all.

Since the case of the applicant does not fall within the aforesaid proposition of law, taking note of the existence of arbitration agreement between the parties in clause No.10 of LOA and it's lawful invocation, I deem it appropriate to exercise the power to appoint the sole arbitrator to adjudicate the disputes that have arisen between them and pass the following order.

: ORDER :

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator** :

Ms.Tanmayi Gadre, an Advocate of this Court, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) **Communication to Arbitrator of this order :-**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) **Disclosure :** The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) **Appearance before the Arbitrator** :The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 30/01/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) **Contact and communication information of the parties :** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) **Section 16 application :** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) **Fees** : The Arbitrator shall be entitled to fees prescribed under Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) **Venue and seat of Arbitration** : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) **Procedure :** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

18. The rights and contentions of the parties are kept open.

19. The Application stands disposed off in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)

M.M.Salgaonkar