

SC: Appointment of Substitute Arbitrator to Conform To S.15

The Supreme Court in the case of Huawei Technologies Co. Ltd. V. Sterlite Technologies Ltd. 2015 SCC Online SC 785, has re-iterated the procedure for the appointment of arbitrator in the event of recusal of the presiding arbitrator.

The Petitioner in this case filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator in accordance with the arbitration agreement contained in clause 22.3 of the Supply Contract between the parties.

Clause 22.3: “All disputes..... shall be referred to arbitration in accordance with the Indian Conciliation and Arbitration Act, 1996 and conducted by a single arbitrator to be appointed by the Parties by mutual consent.”

On 09.04.2007, the parties entered into a Contract for the supply, installation, testing, commissioning of Broadband Access Network. Subsequently, disputes arose between the parties regarding payments amounting to USD 13,390,000. The Petitioner invoked the arbitration agreement and appointed Justice S.K Dubey as the sole arbitrator. Thereafter, the Respondent objected to the appointment of Justice S.K Dubey who, therefore, recused himself as the sole arbitrator. In light of these circumstances, the Petitioner then approached the Court for appointment of an arbitrator under Section 11(6) of the Act.

The Court refused to intervene in this matter holding that the application under Section 11(6) of the Act should have been filed as Section 15(2) of the Act is applicable in this case. That is, where the mandate of an arbitrator terminates, a substitute arbitrator is required to be appointed according to the rules that were applicable to the appointment of the arbitrator who is replaced. Thus, the parties should explore the possibility of naming an arbitrator by mutual consent before filing an application under Section 11(6).

The Court recognised the eventual possibility of this matter once again being referred to Court under Section 11(6), but opined that the correct procedure should be followed. Thus, that Parties are required to make an attempt to appoint a substitute arbitrator under the rules agreed between them, before approaching the Court for assistance.

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