

**SUPREME COURT OF INDIA**

Shaf Broadcast Pvt.Ltd.

Vs.

Doordarshan - A Constituent of Prasar Bharti

Ar.P.No.36 of 2019

(Uday U.Lalit,J., Indu Malhotra and Sanjiv Khanna,JJ.,)

07.11.2019

**ORDER**

**Indu Malhotra,J.,**

1. The Petitioner has filed an Application under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator on behalf of Respondent No. 1 - Doordarshan, in an international commercial arbitration.

2. The Petitioner - Company and Respondent No. 2 entered into a Contract dated 08.03.2010 with Respondent No. 1 - Doordarshan. The Contract contains an arbitration clause, which reads as under : "8.2 Arbitration: In the case of dispute arising upon or in relation to or in connection with the Contract between HB and the Entity, which has not been settled amicably, any Party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting on 3 (three) arbitrators, one each to be appointed by HB and the Entity, the third arbitrator shall be chosen by the two arbitrators so appointed by the Parties which shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the Parties to reach a consensus regarding the appointment of the third arbitrator within a period of Thirty (3) days from the date of appointment of the two arbitrators, the Presiding Arbitrator shall be appointed by the Secretary of the Ministry of Information and Broadcasting, Government of India. The Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof shall apply to these Arbitration proceedings. 8.3 Arbitration proceedings shall be held in India at New Delhi and the language of the Arbitration proceedings and that of all documents and communications between the Parties shall be English. The law as applicable in India shall govern the rights and obligations of the parties."

3. Disputes arose between the parties, which led to the invocation of the arbitration clause on 14.01.2019 by the Petitioner - Company. The Petitioner - Company nominated its arbitrator on 28.02.2019 in terms of the agreement. However, Respondent No. 1 Doordarshan failed to nominate an arbitrator.

Consequently, the Petitioner - Company has filed the present Application under Section 11 of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator by the Court on behalf of Respondent No. 1 - Doordarshan.

4. Even though the arbitration agreement provides for a three-member arbitral tribunal, the Counsel for all the parties at the time of hearing, requested for the appointment of a Sole Arbitrator in modification of the arbitration clause stipulating a three-member tribunal, to adjudicate the disputes.

5. Accordingly, with the consent of the Counsel for the parties, we appoint Mr. Justice (Retd.) A. M. Sapre, Former Judge, Supreme Court of India as the Sole Arbitrator subject to the declarations being made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality, and the ability to devote sufficient time to complete the arbitration within the period of 12 months. The learned Arbitrator is requested to complete the proceedings within the time-limit specified under Section 29A.

6. The arbitration clause specifies that the Seat of arbitration will be at New Delhi, India. We direct the arbitration be conducted at New Delhi as the Seat of arbitration.

7. The Arbitrator will be paid fees in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996 as amended.

8. A copy of this Order be despatched to Mr. Justice (Retd.) A. M. Sapre, Former Judge, Supreme Court of India at the following address:

“Mr. Justice (Retd.) A. M. Sapre, Former Judge, Supreme Court of India, C-203,  
Second Floor Sarvodaya Enclave New Delhi - 110017 Tel No.: 011-40254823  
Mob. No.: 7042955488”

The parties are directed to appear before the learned Arbitrator on 15.11.2019 at 11 a.m.  
The matter is disposed of accordingly.