

ARBITRATION APPLICATION NO. 13 OF 2010

Saraf Agencies P. Ltd. & Anr. ... Petitioners

VERSUS

Russian Federation & Anr. ... Respondents

O R D E R

SURINDER SINGH NIJJAR, J.

1. Heard learned counsel for the parties.
2. This is a petition under Section 11(4) of the Arbitration and Conciliation Act, 1996 read with the appointment of Arbitrators by the Chief Justice of India Scheme, 1996 for appointment of an Arbitrator as nominee of the respondents followed by appointment of Third/Presiding Arbitrator.
3. Mr. R.F. Nariman, learned Senior Counsel has pointed out various clauses of the joint venture agreement which have been entered into and executed by the parties on 29th

January, 2008. The applicant claims that respondent Nos. 1 and 2 have failed to perform their respective obligations under the joint venture partnership agreement. Particulars of the breaches of the obligations of the said respondents arising out of the various agreements are tabulated in the form of a statement which has been attached as Annexure A-10 to the present application. The disputes having arisen, the

applicants brought the same to the notice of the respondents. It appears that there were series of meetings between the parties and on one such meeting held on 3rd March, 2010, it was decided that the Indian and the Russian partners will meet during the second half of March, 2010 to appoint Arbitrators as per the Indian Arbitration Act, to settle the amount of reimbursement and claims payable to Indian Partner by TPPL.

4. Thereafter, on 23rd April, 2010, there was a meeting held for settling the issues related

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to the implementation of the project. It was decided that the issues of settlement of claims to the Indian Party and the transfer of the interest of the Indian party in TPPL would be referred for Arbitration as decided in the meeting held in DIPP, the Government of India, in New Delhi on 3rd March, 2010. It was further decided that a meeting may be held in the last week of May, 2010 in the presence of the officials of the Government of India. In that proposed meeting, both sides would suggest their nominees for the Arbitrators as per the prevalent Indian laws in order to finalise the Arbitration proceedings expeditiously. The parties had also agreed that the decision of the Tribunal would be final and binding upon them as well as on the Joint Venture Company (TPPL).

5. Pursuant to the aforesaid decision, the

Petitioners through their letter dated 24th May, 2010 informed the respondents that the Petitioners have nominated Mr. (Retd.)

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Justice D.P. Wadhwa, former Judge, Supreme Court of India, as their Arbitrator.

6. No nomination was made by the respondents within the prescribed period. They have, however, subsequently on 7th December, 2010 suggested the name of Mr. Sarosh Zaiwala. In my opinion, the respondents having not nominated the Arbitrator within the prescribed time period, cannot now be permitted to make a nomination.

7. Since the respondents have failed to make the nomination in due time, I hereby nominate Hon'ble Mr. justice S.B. Sinha, former Judge of Supreme Court of India as the Second Arbitrator.

8. In normal circumstances, the appropriate order would now be to send the matter back to the Arbitrators for appointment of the Chairman of the Arbitral Tribunal. However, parties have agreed that the matter has already been considerably delayed and needs expeditious resolution. In view of the

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peculiar circumstances of this case, I hereby nominate Mr. Justice S.C. Agrawal, former Judge, Supreme Court of India as the Chairman of the Arbitral Tribunal with the consent of all the parties.

Mr. Rajesh Markanda, Adv.

Mr. Karan Lahiri, Adv.

For Respondent(s)

Mr. Chandranath Mukherjee, Adv.

Mr. Soumik Mukherjee, Adv.

Mr. Partha Sil, Adv.

Mr. Kunal Chatterji, Adv.

Mr. Rudrajyoti Nath Ray, Adv.

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UPON hearing counsel the Court made the following
O R D E R

The Arbitration Petition is
disposed of in terms of the signed order.

(DEEPAK MANSUKHANI)
Court Master

(RENUKA SADANA)
Court Master

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