

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 23 OF 2015

PURPLE INDIA HOLDINGS LTD.

...PETITIONER

VERSUS

DRILLING & OFFSHORE PTE. LTD.

...RESPONDENT

O R D E R

T.S. THAKUR, CJI.

1. In this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 the respondent has not appeared to contest the prayer for appointment of an arbitrator in terms of the arbitration clause found in Engagement Letter dated 24th October, 2013. The Clause reads as under:

"12. Jurisdiction & Dispute Resolution: *This Engagement Letter shall be governed by and construed in accordance with the laws of India. The parties agree that any legal action or proceedings arising out of or in connection with this Engagement Letter may be brought only in the Court of Mumbai.*

*Any and all disputes, controversies or claims (the "Dispute") arising out of or in connection with this Engagement Letter, including any Dispute regarding the validity, interpretation, implementation or alleged breach of any provision of this Engagement Letter shall be settled amicably by mutual consensus, failing which by arbitration to be conducted in accordance with the provision of the Indian Arbitration and Conciliation Act, 1996, as amended (the "**Arbitration Act**"). Arbitration shall be held in Mumbai, India.*

The Company shall appoint one arbitrator and Purple shall appoint one arbitrator and the two arbitrators shall appoint the third or the presiding arbitrator. In the event that Purple or the Company fails to appoint an arbitrator⁴ or the arbitrators fail to appoint the third arbitrator as provided herein, such arbitrator(s) shall be appointed in accordance with the Arbitration Act. The arbitration proceedings shall be conducted and the award shall be rendered in the English language. The award rendered by the arbitrator or arbitrators shall be final, conclusive and binding on all parties to this Engagement Letter and shall be subject to enforcement in any court of competent jurisdiction. Each party shall bear the cost of preparing and presenting its case, and the cost of the arbitration, including fees and expenses of the arbitrators, shall be shared equally by the parties, unless the award otherwise provides. Subject to the foregoing arbitration provision, the court of Mumbai shall have exclusive jurisdiction with respect to any dispute."

2. The petitioner's case is that by letter dated 28th January, 2015 the respondent was called upon to name an Arbitrator for adjudication of the disputes that have arisen

between them but the respondent has failed to do the needful, leaving no alternative for the petitioner except to seek the appointment of an Arbitrator in terms of Section 11(6) of the Act from this Court.

3. We have heard learned counsel for the petitioner. The averments made in the petition must, in the absence of any counter from the respondent, be taken to be correct at least for the purposes of deciding whether the matter ought to be referred to an Arbitrator. This is especially so when the averments are supported by an affidavit filed by the petitioner. In that view, therefore, we see no reason to decline the prayer for appointment of an Arbitrator made by the petitioner. We, accordingly, appoint Hon'ble Mr. Justice H.S. Bedi, former Judge of the Supreme Court of India as the sole Arbitrator to adjudicate upon the disputes that have arisen between the parties. The Arbitrator shall issue notices to the parties in connection with the arbitral proceedings. He is left free to determine his fee. We make it clear that we

have expressed no opinion on the merits of the case which aspect is left open for the parties to urge before the worthy Arbitrator. No costs.

.....CJI
[T.S. Thakur]

.....J.
[R. Banumathi]

.....J.
[Uday Umesh Lalit]

New Delhi;
March 30, 2016

JUDGMENT