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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION (L) NO.12400 OF 2023
AND
COMM ARBITRATION APPLICATION (L) NO.12404 OF 2023

Ramachandran Subramaniyam … Applicant

Vs.

UltraTech Cements Limited … Respondent

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.09.07 12:00:02 +0530

Mr. Akash Loya with Mr. Vishal N. Nevshe and Mr. Abhishek Bhaduri for the Applicant.

Mr. Zubin Behramkamdin, Senior Advocate with Mr. Vijay Purohit, Mr. Pratik Jhaveri and Mr. Abhilash Gaur i/by P & A Law Offices for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 3, 2026.

PRONOUNCED ON : SEPTEMBER 7, 2026

JUDGMENT:

1. The present Applications are filed by the Liquidator of Tecpro Systems Ltd. (in Liquidation) against the Respondent for appointment of an arbitrator to decide the disputes arising from the Supply Contract dated 22 July 2011 entered into between the parties. The said agreement contains an Arbitration Clause at Article 33. The Applicant is seeking appointment for recovery of Rs. 25,37,00,000/- in CARAPL/12400/2023 and Rs. 23,10,00,000/- in CARAPL/12404/2023 from the Respondent.

2. The facts and circumstances which have resulted in filing of the present Applications, as stated by the Applicant, are as follows. On 22 July 2011, Tecpro Systems Ltd. (in Liquidation) and the Respondent entered into a Supply Contract under which Tecpro Systems Ltd. (in Liquidation) was to provide various services to the Respondent. Thereafter, certain disputes arose between the parties in relation to the said contract. On 2 May 2016 in CARAPL/12400/2023 and on 13 July 2016 in CARAPL/12404/2023, Tecpro Systems Ltd. (in Liquidation) addressed letters to the Respondent seeking an amicable settlement of all the issues and resolution of the disputes. On 7 August 2017, an order for commencement of CIRP was passed against Tecpro Systems Ltd. (in Liquidation) in relation to another set of financial dues. On 20 August 2017, Tecpro Systems Ltd. (in Liquidation) issued a Demand Notice under Section 8 of the IBC in respect of the dues claimed from the Respondent. On 8 September 2017, the Respondent, through its Advocate, gave a detailed reply. In the said reply, the Respondent questioned the authority of Tecpro Systems Ltd. (in Liquidation) to issue the said Demand Notice, raised disputes and made a counter-claim. Thereafter, on 30 October 2017, Tecpro Systems Ltd. (in Liquidation) sent another letter to the Respondent invoking arbitration. On 7 November 2017, the Respondent, through its Advocate, replied and refused to appoint an arbitrator on the ground that Tecpro Systems Ltd. (in Liquidation) was undergoing CIRP. On 19 October 2018, Tecpro Systems Ltd. (in Liquidation), under the authority of the Resolution Professional, sent a second notice to the

Respondent invoking arbitration and requesting appointment of an arbitrator. On 12 November 2018, the Respondent again replied through its Advocate and once again refused to appoint an arbitrator. On 27 June 2019, Tecpro Systems Ltd. (in Liquidation) was required to file CARAP/291/19 under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator. The said matter was dismissed on 27 August 2019, with liberty granted to the Applicant to file a fresh application. Thereafter, an order for liquidation of Tecpro Systems Ltd. (in Liquidation) was passed on 16 January 2020. On 30 November 2022, the NCLT granted permission to the Liquidator to proceed against the present Respondent. Therefore, the present Applications have been filed by the Liquidator of Tecpro Systems Ltd. (in Liquidation).

3. Mr. Loya, learned Advocate appearing for the Applicant, submits that the present Applications are filed under Section 11 of the Arbitration and Conciliation Act and, amongst other reliefs, seek appointment of an arbitrator. The Respondent has objected to the maintainability of the present Applications. He submits that the question regarding validity of the Arbitration Invocation Notices cannot be examined while deciding an application under Section 11. According to the Respondent, the Arbitration Notices dated 30 October 2017 and 19 December 2018 are invalid because they were not issued by the Resolution Professional and were instead issued by the suspended Board of the Applicant. At the beginning, it is necessary to note two things. First, there is no dispute that the Arbitration Notices dated 30.10.2017 and 19.12.2018 were issued

under Section 21 of the Act. Second, the dispute is only regarding the identity of the person who issued the notices and whether that person had the authority to issue them. It is submitted that the objection regarding the identity and authority of the person who issued the Arbitration Invocation Notices can be examined only at the stage of trial. According to Mr. Loya, such objections do not make the present Section 11 Applications not maintainable. In support of his submissions, Mr. Loya relied upon the decisions in *Shreegopal Barasia v. Creative Homes*, 2025 SCC OnLine Bom., and *National Yogasana Sports Federation and Ors. v. Udith Sheth*, 2025 SCC OnLine Del. 2028.

4. He submits that, in any event, the Arbitration Notice dated 19 December 2018 is a valid invocation notice. According to him, on reading the Arbitration Notice dated 19 December 2018, it is clear that the said notice was issued by the Resolution Professional. Therefore, there is a valid Arbitration Notice dated 19 December 2018 in relation to the arbitration proceedings. He submits that even if there is any defect relating to lack of authority, the same can be corrected. According to him, even assuming, without admitting, that the Arbitration Invocation Notices dated 30 October 2017 and 19 December 2018 were issued by the suspended Board of the Applicant and were therefore without authority, such defect can be cured. This is because the notice under Section 21 of the Act is only a procedural requirement. Therefore, any defect relating to such notice would be a procedural defect. In support of this submission, Mr. Loya relied upon the decision of this Court in *Palmview Investments Overseas*

Limited v. Ravi Arya, 2023 SCC OnLine Bom. 966.

5. He submits that Section 21 does not prescribe any particular format for issuing the notice. The Respondent has contended that the Arbitration Invocation Notices are invalid because the Applicant has not given the name of the proposed arbitrator in the arbitration notice. It is submitted that the notice under Section 21 is only a procedural requirement and its purpose is to identify the date on which the arbitration proceedings are initiated for calculating limitation. Section 21 does not prescribe any particular format or form of notice. Therefore, according to Mr. Loya, merely because the name of the arbitrator is not mentioned in the arbitration notices, the notices under Section 21 do not become invalid. In support of this submission, Mr. Loya relied upon the decisions in *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji and Company Private Limited*, 2025 SCC OnLine SC 1016, *Tata Capital Housing Limited v. Inderjeet Sahni and Ors.*, 2026 SCC OnLine Bom. 625, and *Movetime Cinemas Private Limited v. Chetak Cinemas*, 2024 SCC OnLine Raj. 2781. He submits that, on reading the Arbitration Invocation Notices dated 30 October 2017 and 19 December 2018, it is clear that the Applicant has and clearly stated its intention to commence arbitration proceedings.

6. Mr. Behramkamdin, learned Senior Advocate appearing for the Respondent, submits that the Purported Arbitration Notices were not issued by the Resolution Professional. According to him, the said notices were issued by the suspended directors of the Applicant company. After commencement of CIRP, the suspended directors had no authority to act for or on behalf of the Applicant

company. Such authority was with the Resolution Professional under Section 17 of the IBC, read with Sections 18 and 20, which set out the duties and responsibilities of the Resolution Professional. He submits that this position is made clear by Section 238 of the IBC, which gives the provisions of the IBC an overriding effect over other laws. Therefore, according to the Respondent, the Purported Arbitration Notices are non-est and cannot be treated as valid notices for deciding whether the Applicant had properly invoked arbitration.

7. Mr. Behramkamdin submits that separate Arbitration Invocation Notices were required to be issued in respect of each of the two contracts. According to him, the two agreements are separate and independent agreements and the disputes arising under them are based on different and separate causes of action. He submits that this Court, in its order dated 27 August 2019 passed in the First CARAP, has already held that there are two separate arbitration agreements and two separate Supply Contracts and that the Applicant was required to initiate two different legal proceedings. Therefore, according to the Respondent, the Applicant was required to invoke and commence two separate arbitrations, one under each contract, by issuing two separate notices under Section 21 of the Act. He submits that from the Third CARAPs it is clear that the Applicant has not issued two separate notices for commencing two separate arbitral proceedings under the two agreements. Therefore, according to him, there are no valid notices for commencing the two separate arbitral proceedings which are now sought to be initiated through the

present Applications.

8. He submits that the present Applications do not give the necessary particulars of the disputes or the claims made by the Applicant. According to him, in the Third CARAPs, the Applicant has not stated the details of the disputes or the claims raised by it. The Applicant has not produced documents which would support or establish the claims made in the present Applications. He submits that the Purported Arbitration Notices were not addressed in the manner required under the contracts. According to him, the purported arbitration notice dated 30 October 2017 was issued by the suspended director of the Applicant company and was addressed to M/s. Manilal Kher Ambalal & Co. at MKA Chambers, British Hotel Lane, Off Bombay Samachar Marg, Fort, Mumbai-400001. Similarly, the purported arbitration notice dated 19 October 2018 was issued by the suspended director of the Applicant company and was addressed to 'M/s. UltraTech Cements Limited" at "B" Wing, 2nd Floor, Ahura Centre, Mahakali Caves Road, Andheri (East), Mumbai 400 093. He submits that these notices were not addressed to the Respondent in the manner required under the subject contracts. Therefore, according to him, the said notices are invalid and cannot be treated as valid notices under the contracts.

9. Mr. Behramkamdin submits that the Applicant has failed to comply with the requirement of appointing its nominee arbitrator. He relies upon Article 33 of the contract, which provides: “... The arbitration proceeding shall commence once any one party to the contract communicates to the other party regarding invocation of

arbitration agreement along with the name of the nominee joint arbitrator.…" He submits that in neither of the Purported Arbitration Notices did the Applicant name its nominee arbitrator. According to him, giving the name of the nominee arbitrator was a mandatory requirement for a valid notice invoking arbitration under Article 33 of the arbitration agreement. Since the Applicant did not name its nominee arbitrator, the Purported Arbitration Notices are invalid. Consequently, there was no valid commencement of arbitral proceedings under Section 21 of the Act.

REASONS AND FINDINGS:

10. I have considered the submissions made by Mr. Loya, learned Advocate for the Applicant, and Mr. Behramkamdin, learned Senior Advocate for the Respondent.

11. The first question which arises is as to what this Court is required to examine in a proceeding under Section 11 of the Arbitration and Conciliation Act. In the present case, the Respondent does not dispute the existence of the arbitration clause. Article 33 of the Supply Contract contains the agreement between the parties to refer their disputes to arbitration. Therefore, there is no dispute before this Court about the existence of the arbitration agreement.

12. In *Shreegopal Barasia*, this Court has observed that the Court exercising jurisdiction under Section 11 "ought to restrict its scrutiny to ascertaining the existence of an agreement." The Court has observed that questions as to whether the agreement

appearing from the record really exists and, if it exists, whether it is validly existing, can be considered by the Arbitral Tribunal. This principle has to be kept in mind while considering the objections raised by the Respondent.

13. The Supreme Court has considered the effect of a defect in a notice under Section 21 in *ASF Buildtech (P) Ltd.*. In paragraph 180, the Supreme Court has observed that "mere non-service of a notice of invocation on a party would not nullify the Arbitral Tribunal's jurisdiction over such party". In paragraph 187, the Supreme Court has observed that "Even the non-issuance of Section 21 notice on the appellant cannot be said to be fatal to its impleadment." These observations, however, have to be understood in the facts in which they were made. This does not mean that every defect in an arbitration notice is to be ignored. The nature of the particular defect has to be seen. The Court has to consider whether the objection goes to the existence of the arbitration agreement or whether it relates to the manner in which an existing arbitration agreement was invoked. This distinction is important for deciding the objections raised in the present case.

14. Here, there is no dispute about the arbitration agreement contained in Article 33. The objections of the Respondent are mainly against the Arbitration Invocation Notices. According to the Respondent, the notices were issued by persons who had no authority after commencement of CIRP. It is submitted that there were two separate contracts and therefore two separate notices were necessary. The Respondent submits that the notices were not addressed in the manner required under the contracts, that

sufficient particulars of the disputes and claims were not given and that the Applicant did not mention the name of its nominee arbitrator. Thus, these objections relate to the manner in which the arbitration agreement was invoked. They do not dispute the existence of Article 33.

15. I first consider the objection regarding the authority of the persons who issued the Arbitration Invocation Notices. The Respondent submits that the notices were issued by the suspended directors and not by the Resolution Professional. There is substance in the submission that after commencement of CIRP, the powers of the Board of Directors stand suspended and the management of the corporate debtor is placed under the control of the interim Resolution Professional. Section 17, relied upon by the Respondent, provides that "the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional". The same provision provides that the interim resolution professional shall "act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any". Therefore, the position regarding the powers of the suspended Board after commencement of CIRP is clear. The Respondent has relied upon Section 238 of the IBC. The said provision gives the IBC an overriding effect in case of inconsistency with another law. Therefore, if a notice was issued by the suspended Board at a time when the Board had no authority to act for the corporate debtor, that circumstance is certainly relevant and has to be considered.

16. However, the above position does not by answer the issue before this Court. The question is not whether the suspended directors had general authority to manage the affairs of the corporate debtor after commencement of CIRP. The statutory position on that issue is clear. The question is what effect is to be given to the particular Arbitration Invocation Notices and whether the alleged lack of authority of the person issuing those notices is sufficient to refuse appointment of an arbitrator under Section 11. In my view, this question has to be considered from the complete record and the conduct of the parties. The Applicant relies upon the notice dated 30 October 2017 and upon the subsequent notice dated 19 December 2018. The Applicant's case is that the later notice was issued by the Resolution Professional. Therefore, even if the objection regarding the authority behind the first notice requires consideration, that objection cannot by conclude the matter if the later notice was issued by a person having authority.

17. The Applicant has submitted that the Arbitration Notice dated 19 December 2018 was issued by the Resolution Professional. The Respondent disputes its validity and legal effect. However, the existence of this later notice is not disputed. The dispute is about the effect which should be given to it. That question does not affect the existence of the arbitration agreement contained in Article 33. I therefore do not accept the submission of the Respondent that merely because the earlier notice may have been issued by the suspended directors, the entire arbitration clause becomes incapable of being acted upon. The authority of the person issuing a particular notice may affect the validity or

effectiveness of that notice. It may have relevance to limitation or the date from which arbitration is to be treated as commenced. But it is not an objection to the existence of the arbitration agreement.

18. I now consider the submission that two separate Arbitration Invocation Notices were required because there are two separate Supply Contracts and two separate causes of action. The Respondent relies upon the order dated 27 August 2019 passed in the First CARAP and submits that this Court had recognised that there were two separate arbitration agreements and that separate legal proceedings were required. To this extent, the submission of the Respondent is correct. If there are two independent contracts containing separate arbitration agreements and separate disputes arise under those contracts, each arbitration agreement has to be considered separately. In the present case, the Applicant has filed two Applications, namely CARAPL/12400/2023 and CARAPL/12404/2023, with separate monetary claims. The Applicant has therefore treated the two matters separately. However, the question is not whether two separate arbitrations can be sought. Where the contracts and arbitration agreements are separate, they can be dealt with separately. The question is whether the communications sent by the Applicant show an intention to invoke arbitration in relation to the disputes arising under the concerned contracts. The objection cannot be decided merely by looking at the form of the notices. The contents of the notices and the conduct of the Respondent have to be considered.

19. The material before the Court shows that on 30 October 2017 the Applicant sent a communication invoking arbitration and

thereafter another notice was sent on 19 December 2018. The Respondent received and replied to these communications. Therefore, this is not a case where there was no communication between the parties or where the Respondent was unaware that the Applicant was seeking to invoke arbitration. The reply dated 7 November 2017 sent by the Respondent through its Advocate is important in this regard. The Respondent did not treat the communication as having nothing to do with arbitration. It replied to the communication and refused to appoint an arbitrator, principally on the ground that Tecpro Systems Ltd. was undergoing CIRP. Similarly, on 12 November 2018, the Respondent again replied through its Advocate and refused appointment of an arbitrator. The conduct of the Respondent therefore shows that it understood the communications as attempts by the Applicant to invoke arbitration. When a party receives a communication invoking arbitration and replies to it by refusing to appoint an arbitrator, it is difficult for the same party to contend that there was no communication invoking arbitration at all. There may still be a dispute as to whether the notice strictly complied with the contract or what date should be treated as the date of commencement. But that is different from saying that there was no attempt to invoke the arbitration agreement.

20. The Respondent has next submitted that the present Applications do not contain sufficient particulars of the dispute and claim. I am unable to accept this objection as a ground for rejecting the Applications. At the stage of Section 11, the Court is not required to finally decide the claim of the Applicant. The Court

is not required to conduct a trial regarding the amount claimed. In the present Applications, the Applicant has stated claims of Rs. 25,37,00,000/- and Rs. 23,10,00,000/- respectively. The Applicant has relied upon the relationship and the correspondence exchanged between the parties regarding the disputes. Whether the Applicant will prove the entire amount claimed is a matter for the Arbitral Tribunal.

21. The Respondent has submitted that the Arbitration Invocation Notices were not addressed to the Respondent in the manner required under the contracts. It is submitted that the notice dated 30 October 2017 was addressed to M/s. Manilal Kher Ambalal & Co. and that the subsequent notice was addressed to UltraTech Cements Limited. This objection has to be considered because the requirement regarding the manner of giving notice may have legal significance. However, the actual conduct of the parties is important. The material before the Court shows that the Respondent received the communications and replied to them through its Advocate. Therefore, whatever may be the objection regarding the exact address or addressee mentioned in the notices, the Respondent was in fact aware of the invocation and responded to it. In these circumstances, I do not find that the alleged defect in the address is sufficient to hold that there was no invocation of arbitration. Whether the notices strictly complied with the contract regarding service can be considered by the Arbitral Tribunal. At this stage, the important fact is that the Respondent received and answered the communications. Therefore, this objection is not sufficient to defeat the arbitration agreement.

22. The next objection concerns the requirement under Article 33 regarding the name of the nominee arbitrator. The Respondent relies upon the following words contained in Article 33:

> "... The arbitration proceeding shall commence once any one party to the contract communicates to the other party regarding invocation of arbitration agreement along with the name of the nominee joint arbitrator.…"

23. According to the Respondent, these words make it compulsory for the party invoking arbitration to mention the name of its nominee arbitrator. Since the Applicant did not mention such name in the notices, the Respondent submits that there was no valid invocation and no commencement of arbitral proceedings under Section 21 of the Act. This submission cannot be rejected simply by saying that Section 21 does not prescribe any particular form of notice. The parties have agreed to the terms contained in Article 33. Those terms have to be considered. If the contract provides that the arbitration proceeding shall commence when one party communicates the invocation "along with the name of the nominee joint arbitrator", that requirement cannot be treated as having no meaning. At the same time, the effect of not complying with this requirement has to be separately considered. Failure to comply with one requirement of an invocation notice does not mean that there was no arbitration agreement between the parties. Article 33 continues to exist. The Respondent relies upon Article 33 while objecting to the manner in which the agreement was invoked.

24. The decision in *ASF Buildtech* is relevant on this question. The Supreme Court has held that a defect relating to a Section 21 notice does not destroy the jurisdiction of the Arbitral Tribunal. The effect of the particular defect has to be considered in the facts of the case.

25. I am not inclined to hold that every breach of Article 33 is curable. Such a finding would be too wide. The question whether the absence of the nominee arbitrator's name affected the commencement of arbitration, whether it caused prejudice to the Respondent and what consequence should follow from the omission can be considered by the Arbitral Tribunal. However, on the material before me, the omission does not destroy the arbitration agreement and does not justify rejection of the present Section 11 Applications. The correspondence between the parties supports this conclusion. The Applicant repeatedly sought appointment of an arbitrator. The Respondent did not reply by saying that there was no arbitration clause or no agreement to arbitrate. It opposed the appointment on grounds including CIRP and lack of authority. This conduct shows that the parties were proceeding on the basis that Article 33 contained an arbitration agreement and that the Applicant was seeking to invoke that agreement. I therefore find that the Applicant had expressed its intention to commence arbitration. The failure to mention the name of the nominee arbitrator may be raised as an objection concerning the manner or effect of the invocation. But, in the facts of the present case, it is not sufficient to hold that there was no arbitration agreement or that the Section 11 Applications must fail.

26. I now come to the question of limitation. The Respondent has raised objections concerning the validity and timing of the invocation. The relevant dates include the earlier correspondence, the notices dated 30 October 2017 and 19 December 2018, the First CARAP and the subsequent proceedings. These dates may have relevance while deciding limitation. However, whether the claims are barred by limitation, what is the correct date of commencement, whether any period is required to be excluded and whether limitation was otherwise extended are matters which can be considered by the Arbitral Tribunal on the pleadings and evidence. I, therefore, do not consider it necessary to finally decide the entire issue of limitation in the present Section 11 proceedings. This Court is not required to decide the claim as if it is finally adjudicating the disputes between the parties. On the material before me, limitation is not shown to be a ground which requires rejection of the present Applications at this stage.

27. The Respondent has relied upon the earlier order dated 27 August 2019 passed in the First CARAP. The said proceedings were dismissed with liberty to file afresh. I do not find that the said order creates any bar to the present Applications. There was no final adjudication by that order which extinguished the arbitration agreement or finally decided the disputes between the parties. The Applicant was given liberty to take steps in accordance with law. The subsequent events require consideration. An order of liquidation was passed against Tecpro Systems Ltd. on 16 January 2020. Thereafter, on 30 November 2022, the NCLT granted permission to the Liquidator to proceed against the present

Respondent. The present Applications have been filed by the Liquidator and not by the suspended directors in their personal capacity. Therefore, the authority of the suspended Board in 2017 cannot by determine the authority of the Liquidator when the present Applications were filed.

28. I have considered the objection of the Respondent regarding the authority of the suspended directors. I find that the Respondent is correct to the extent that after commencement of CIRP, the suspended Board could not continue to exercise the powers of management which had vested in the Resolution Professional. Section 17 of the IBC makes this position clear. However, the conclusion sought to be drawn by the Respondent is wider than what can be accepted in the present proceedings. Even if the lack of authority of the suspended directors is established in respect of a particular notice, that does not by destroy the arbitration agreement contained in Article 33. The question whether a particular notice issued by the suspended directors was legally effective and what consequence follows from it is different from the question whether Article 33 exists. Article 33 exists. The parties agreed to arbitration. The dispute is about the manner in which that agreement was invoked. It cannot be treated as a case where the parties never agreed to arbitrate.

29. I have considered the submission regarding the two separate contracts. I accept that the two contracts have to be considered separately if they contain separate arbitration agreements and give rise to separate disputes. The Applicant has filed two Applications and has claimed separate amounts under the respective contracts.

Therefore, the disputes under the two contracts shall have to be dealt with separately and in accordance with the respective arbitration clauses. However, the requirement of separate proceedings does not mean that any defect in the form of an invocation notice takes away the right to arbitration. The communications exchanged between the parties show that arbitration was being invoked and that the Respondent understood the nature of the Applicant's demand. Whether the notices fully complied with the requirements can be considered by the Arbitral Tribunal.

30. The objection regarding the addressee of the notices does not justify rejection of the Applications. The Respondent admittedly replied to the communications. It was aware of the Applicant's attempt to invoke arbitration. The effect of the manner of service can be considered by the Arbitral Tribunal. On the material before me, it cannot be said that there was complete absence of communication under Section 21.

31. The same conclusion applies to the objection regarding the name of the nominee arbitrator. I have considered Article 33 and the words relied upon by the Respondent. The requirement is relevant and cannot be ignored. However, its alleged non-compliance concerns the manner in which the existing arbitration agreement was invoked. It does not make Article 33 disappear. The observations of the Supreme Court in paragraphs 180 and 187 of *ASF Buildtech* show that defects concerning a Section 21 notice cannot in every case be treated as fatal to the arbitral process. The Court must keep in mind the limited nature of a Section 11

proceeding. Such proceeding cannot be converted into a full trial concerning every objection raised about the earlier correspondence. The Section 11 Court is required to conduct a limited examination. Where an objection requires detailed consideration of facts, documents or evidence, the Arbitral Tribunal is the proper forum for deciding such issue, subject to law.

32. I have, therefore, considered each of the material objections raised by the Respondent. The objection regarding the authority of the suspended directors has substance only to the extent stated above. The objection regarding the two separate contracts is accepted to the extent that the two disputes have to be dealt with separately. The objection regarding the addressee of the notices does not justify rejection because the Respondent received and replied to the notices. The objection regarding the absence of the nominee arbitrator concerns a requirement relating to invocation, but it does not destroy the arbitration agreement. The objection regarding particulars of the claim does not justify rejection because the merits and proof of the claim are matters for the Arbitral Tribunal.

33. On an overall consideration of the record, I find that the existence of the arbitration agreements under the respective Supply Contracts is established and is not disputed by the Respondent. Disputes have arisen between the parties. The Applicant communicated its intention to invoke arbitration. The Respondent received and replied to those communications. The Applicant thereafter approached this Court for appointment of an arbitrator. The earlier Section 11 proceedings were disposed of

with liberty to file afresh. The Applicant is now represented by the Liquidator and the NCLT has granted permission to proceed against the Respondent. In these circumstances, I am unable to accept the submission that the defects or objections concerning the Arbitration Invocation Notices are sufficient to defeat the present Applications at the threshold. Those objections may be relevant before the Arbitral Tribunal while considering the validity and effect of the invocation, limitation, commencement of proceedings and other connected issues. They do not take away the arbitration agreement admittedly existing between the parties.

34. I, therefore, hold that the Applicant has established the existence of an arbitration agreement and has shown that the disputes raised by it arise from the relationship containing the arbitration clause. The objections raised by the Respondent do not constitute sufficient ground for refusing reference under Section 11 of the Arbitration and Conciliation Act. Accordingly, the present Applications deserve to be allowed. The disputes arising under the respective Supply Contracts are required to be referred to arbitration in accordance with Article 33 of the respective contracts. The questions concerning the merits of the claims, quantum, liability, counter-claims, limitation, the effect of the particular Arbitration Invocation Notices and other matters falling within the jurisdiction of the Arbitral Tribunal shall remain open for consideration in the arbitration proceedings, in accordance with law.

35. In view of the aforesaid, the both Applications filed under Section 11 of the Act, is disposed of by passing the following

order:

A) Justice Avinash Gharote former judge of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the respective Supply Contracts dated 22 July 2011 between the Applicant and the Respondent in accordance with Article 33 of the respective Supply Contracts;

Office Address:- Plot No.49, Ground Floor, Shreenarayan Complex, Besides Punjab National Bank, Bajaj Nagar, Nagpur 440010

Email ID:avinashgharote.arb@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the

Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

36. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

37. All contentions of the parties on the merits of their respective claims and disputes are kept open for consideration by the learned Arbitral Tribunal in accordance with law.

38. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)