HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

A.A. no. 14/2012

Date of order: 26.09.2014

Nokia India Pvt. Ltd. v. EMM ARR Computers

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the petitioner(s) : Mr. Parag Sharma, Adv.

For the respondent(s) :

Whether to be reported in : Yes/No

Press/Media

ii/ Whether to be reported in : Yes/No

Digest/Journal

This is an application with a prayer to appoint the third Arbitrator in addition to the two arbitrators appointed by the parties in terms of the Arbitration Clause 18.2 incorporated in the agreement dated 14.11.2008 (Annexure-B). The aforesaid Clause 18.2 is set out below *in extenso*:-

"18.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the **Indian Arbitration and Conciliation Act, 1996** and the Rules thereunder for the time being in force, which rules are deemed to be incorporated by reference to this clause. The arbitral panel shall consist of one arbitrator to be appointed by each party and an umpire nominated and appointed by the two arbitrators. The language

of the arbitration shall be English. Neither party shall disclose to any third party the existence, nature, content, or outcome of any arbitration, or purported arbitration, brought in respect of this Agreement. Neither shall any party disclose to any third party:

Any document prepared or procured in the course of or otherwise for the purpose of the arbitration;

Any document prepared or procured by the other party and received in the course of or otherwise for the purpose of the arbitration;

Any document received directly or indirectly from the Tribunal or any court of competent jurisdiction including, but not limited to, any direction, order or award;

Save insofar as may be necessary for the purpose of conducing the arbitration itself, or making any application to a court to competent jurisdiction in respect of the arbitration, or for the enforcement of any order or award of the Tribunal, or of any order or judgment of the Court, or as may be required to comply with any lawful authority."

(Emphasis supplied)

In pursuance of the aforesaid Clause, the parties have appointed Mr. Justice O.P. Sharma (Retd.) and Mr. Satinder Gupta, Advocate to act as a member of 'Arbitral Panel'. It is thus established that there is dispute between the parties which stands acknowledged by appointment of Arbitrator by each

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one of them and there is Arbitration Clause 18.2.

There is no consensus for appointment of third

Arbitrator. In the letter dated 08.02.2012, Mr. Justice

O. P. Sharma (Retd.) has suggested the names of two

former Judges of this Court to act as umpire.

Keeping in view the aforesaid Clause and the

difficulty to appoint an umpire, I appoint Justice

J.A.Kawoosa (Retd.) as the third Arbitrator. A copy of

the order be sent to all the three Arbitrators and they

are requested to enter upon arbitration and finalize

the same at the earliest.

Petition stands disposed of.

(M. M. Kumar) Chief Justice

Jammu, 26.09.2014