



File No. 36-02/80-Law/22

Dated 27.10.2021

The Directors/Heads of all National Labs/Instts./Units of CSIR

**Sub: Change in Arbitration clause of Domestic Agreement in accordance with Section 12(5) of Arbitration and Conciliation Act, 1996 introduced by the Arbitration and Conciliation (Amendment) Act, 2015.**

**Ref: CSIR Circular letter dated No. 36-02/80-Law/355 dated 06.05.2019**

Sir/Madam,

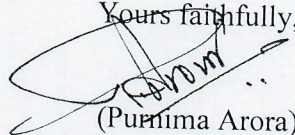
It is brought to the kind attention of all concerned that recently in an order dated 08.07.2021 of Hon'ble High Court of Kerala in the case of Tulsi Developers India Pvt. Ltd. Vs. Dr. Appu Benny Thomas, while relying on the judgment of Hon'ble Supreme Court in TRF Ltd. Vs. Energo Engineering Projects Ltd., has held, "Subsequent to the amendment to the Act in the year 2015 through which sub Section (5) was inserted into section 12 notwithstanding any agreement to the contrary any person whose relationship with the parties falls under any of the categories in the 7<sup>th</sup> Schedule of the Act, is rendered ineligible to be appointed as an Arbitrator". Hon'ble Court discarded the stipulation of the existing Arbitration clause in the agreement to the extent to which it allows the respondent to nominate the Arbitrator when the parties fail to arrive at a consensus nominee.

In view of the amendments 2015 and 2019 in the Arbitration & Conciliation Act, 1996 regarding the arbitration, and the recent order of the Hon'ble Kerala High Court as quoted above, It is stated that the Arbitration clause providing for appointment of Sole Arbitrator by any of the parties to the agreement, irrespective of the date of such agreement, shall stand redundant. In case of any dispute with respect to such agreement, the Arbitrator shall be got appointed in accordance with circular dated 06.05.2019, as referred to above, i.e. by referring the matter to Delhi International Arbitration Centre (DIAC).

Hence in future also, the model "Arbitration Clause" in the domestic agreement will be as under:-

**"ARBITRATION"**

1. In the event of any question /dispute/difference arising under the agreement or in connection herewith (except as to matters the decision of which is specially provided under this agreement) the same shall be referred to the Delhi International Arbitration Centre for appointment of Arbitrator to adjudicate the dispute.
2. The award of the Arbitrator shall be final and binding on the parties. The Arbitrator may give interim award(s) and /or directions, as may be required.
3. Subject to the aforesaid provision, the arbitration and conciliation act, 1996 and the rules made hereunder and any modification thereof from time to time being in force shall be deemed to apply to the Arbitration proceedings under this clause."

Yours faithfully,  
  
(Purnima Arora)  
Under Secretary (Legal)