***Moot Problem***

An agreement for supply of certain equipments was inalized between the parties **ABC Limited** and **XYZ Limited** on 15.10.2014. This contract contained an arbitration clauseregarding resolution of dispute arising between the parties which read as follows:

In the event of any question, dispute or di erence arising under the agreement or in connection therewith (except as to the matters, the decision to which is speciically provided under this agreement), the same shall be referred to the sole arbitration of the MANAGING DIRECTOR, **ABC Limited** or in case his designation is changed or his of ice isabolished, then in such cases to the sole arbitration of the of icer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the MANAGING DIRECTOR, **ABC Limited** or by whatever designation such an oficer maybe called (hereinafter referred to as the said of icer), and if the MANAGING DIRECTOR or the said of icer is unable or not willing to act as such, then to the sole arbitration of some other person appointed by the MANAGING DIRECTOR or the said of icer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act, 1996, (hereinafter referred to as Act). There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant/PSU Employee he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be inal and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his of ice of being unable to act for any reason whatsoever, the MANAGING DIRECTOR, **ABC Limited** or the said of icer shall

appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

A dispute and di erence arose between the parties, therefore **XYZ Limited** invoked the aforesaid arbitration clause and called uponthe MANAGING DIRECTOR of **ABC Limited** to appoint an independent and impartial arbitrator for resolution of the dispute arisingout of the above agreement dated 15.10.2014. The MANAGING DIRECTOR of **ABC Limited** and in terms of arbitration clausecontained in the agreement dated 15.10.2014 nominated Shri Chandra Prakash as sole arbitrator for adjudication of dispute between the parties, it was further made clear that the parties would be free to ile claims and counter claims before the aforesaid sole arbitrator.

The arbitrator commenced the proceedings, in terms of his appointment. On the basis of law laid down by the Supreme Court **ABC Limited** challenged the authority of arbitrator to adjudicate. It was alleged by application that since the MANAGING DIRECTOR of the **ABC Limited** which was one of the parties to the arbitration was himself ineligible to act as arbitrator, such ineligible person could notappoint arbitrator, and therefore the appointment of arbitrator by MANAGING DIRECTOR of **ABC Limited** is null and void. It wasprayed that Mr. Chandra Prakash withdraw from the proceedings so that the parties may approach the High Court for appointment of a substitute arbitrator in his place.

After hearing both the parties on this application, by order dated 30.03.2016 the Arbitrator rejected this application in cursory way without giving any reasons for such rejection.

Being aggrieved by this order **ABC Limited** filed a petition before High Court under sections 14 and 15 of the Arbitration &Conciliation Act, 1966 claiming that being nominee of the MANAGING DIRECTOR of **ABC Limited**, the arbitrator has becomeincapable of acting as such a substitute sole arbitrator therefore some other person to be appointed in his place. This petition was rejected by the High Court on the ground that the very person who has appointed the arbitrator is estopped from challenging his appointment. It was also observed that **XYZ Limited** has filed the claim without any objection to such appointment; the same would amount to an express agreement in writing, which would therefore amount to waiver of the applicability of section 12(5) of the Arbitration & Conciliation Act, 1996.



The aggrieved party has filed an SLP before the Supreme Court.

**Issues-**

1. What should be done by the Supreme Court in the matter?
2. What are the duties of the person approached for possible appointment as arbitrator?
3. What is the required level of independence and impartiality of arbitral panel?
4. When will the mandate of Arbitrator terminate automatically?

The parties can frame any other issue relevant for the disposal of case.