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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 616/2016**

SARDAR EXHIBITORS PVT. LTD.

..... Petitioner

Through: Mr Rajiv K. Garg and Mr Ashish K.
Garg and Mr Govind Singh,
Advocates.

versus

GOVERNMENT OF INDIA & ANR.

..... Respondents

Through: Mr Vivekanand Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.12.2016

IA No.14935/2016

1. For the reasons stated in the application, the delay of 43 days in filing is condoned.
2. The application is disposed of.

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3. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an arbitrator be appointed to adjudicate the disputes between the parties in respect of the lease deeds dated 31.10.2011 and 28.01.2015.
4. The said deeds contained an arbitration clause, which is set out below:-

"17. Should any dispute or difference arise concerning the subject matter of these presents or interpretation of any covenant, clause or thing herein contained or otherwise

arising out of this lease agreement the same shall be referred for arbitration to the Tribunal, having, Sole arbitrator. At the time of making a request for reference of dispute to the arbitration, the claimant shall along with such request send a panel of five persons to the other party. The other party shall within 15 days of the receipt of such communication select one member of the panel to act as Sole Arbitrator. In case none in the proposed panel is acceptable to the other party, such other party shall within the above 15 days send another panel of five persons to claimant, and the claimant shall be entitled to nominate the Sole Arbitrator from among the panel sent by the opposite party. In case none of the members of this panel is acceptable to the claimant the Sole Arbitrator shall be appointed by the Secretary, Department of Legal Affairs Government of India, Delhi.

The provisions of Arbitration and Conciliation Act, 1996 with any statutory modification thereof and rules framed there under shall be applicable to such Arbitration proceeding, which shall be held at New Delhi. The arbitration proceedings shall be conducted in Hindi/English. The cost of the arbitration shall be borne as directed by the Arbitral Tribunal. For the purposes of this clause, the officer mentioned in clause 16 shall be authorized to act and nominate arbitrator on behalf of the Government of India."

5. In view of the disputes that have arisen between the parties, the petitioner sent a notice dated 09.08.2016 suggesting the names of five persons to be appointed as the arbitrator. In terms of the arbitration clause, the respondent was to select one out of the said names to be appointed as an arbitrator. However, the respondent did not respond to the aforesaid notice.

6. The learned counsel for the respondent does not dispute the existence of the lease deeds or the arbitration clause. The only objection raised on behalf of the respondent is that in terms of the arbitration clause, the

Secretary, Department of Legal Affairs, Government of India, is the appointing authority and, therefore, he should be called upon to appoint an arbitrator.

7. A plain reading of the arbitration clause indicates that the party invoking the arbitration clause (claimant) is required to suggest names of five persons to be appointed as the arbitrator. The respondent is required to accept any one of the names within a period of fifteen days. In the event the respondent is not agreeable to appoint any of the persons suggested as the arbitrator, the respondent is to suggest a panel of five persons. If none of the persons suggested by the respondent are acceptable, the appointment is to be made by the Secretary, Department of Legal Affairs, Government of India.

8. In the present case, the respondent did not respond to the notice sent by the petitioner and, therefore, the occasion for Secretary, Department of Legal Affairs, Government of India to appoint an arbitrator did not arise.

9. In the circumstances, the contention that Secretary, Department of Legal Affairs, Government of India should be called upon to appoint an arbitrator, is not persuasive.

10. Since the arbitration clause is not disputed and disputes have arisen between the parties, it is necessary that an arbitrator be appointed.

11. Accordingly, Mr Brajesh Kumar, ADJ (Retired), Mobile No. 9968139955 is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and further not being ineligible under

Section 12(5) of the Act. The Arbitrator shall fix his fees in consultation with the parties, subject to a maximum of ₹3.5 lacs. The parties are at liberty to approach the learned Arbitrator for fixing the schedule for further arbitral proceedings.

12. The petition stands disposed of.

13. *Dasti.*

DECEMBER 15, 2016
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VIBHU BAKHRU, J