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

+ **ARB.P. 760/2016**

HONSHU BUILDCON PVT. LTD.

..... Petitioner

Through Mr Harpreet Singh, Advocate.

versus

**NORTH DELHI MUNICIPAL CORPORATION
& ANR.**

..... Respondents

Through Ms Mini Pushkarna, Standing Counsel
NMCD with Mr Vasundhra Nayyar and
Ms Anushruti, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.12.2016

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed for adjudicating the disputes that have arisen between the parties in relation to a contract for display of media through Kiosk on Lamp Posts/Street Light Poles in the Central verge of Commercial and MLU Roads maintained by the MCD or PWD in the jurisdiction of North Delhi Municipal Corporation (Rohini Zone).

2. It is not disputed that there is an arbitration agreement which is reflected in the Terms & Conditions of the contract. The arbitration clause is set out below:-

“15. ARBITRATION

- (I) Any dispute arising out of the contract granted to the advertiser, for display of advertisement in the said area of North DMC area shall be referred to the sole arbitration of the Commissioner, North DMC or any other officer nominated by him in this behalf either by himself or on party's request. There shall be no bar to the reference of dispute to the arbitrator or such officer as nominated by the Commissioner even if the said officer might have dealt with the matter earlier and expressed his opinion thereon. In case the arbitrator to whom the matter is originally referred is transferred or vacates his office or is unable to act for any reason, the Commissioner North DMC shall be competent to appoint another person to act as an arbitrator, who shall be entitled to proceed with the reference from the stage at which it was left by the predecessor. No person other than the one nominated by the Commissioner North DMC shall act as arbitrator. The decision of the Commissioner or the arbitrator nominated by him, shall be final and binding on the party (ies). The limitation period for filing claims for arbitration is 90 days from the expiry of the contract period and in case no claim is filed within this period. It shall be presumed that there is no claim/dispute.
- (II) Subject to above, the provisions of the Arbitration Act in force, or any statutory modification or re-enactment thereof and the rules made there under and for time being in force, shall apply to the arbitration proceedings under this clause.
- (III) The party invoking the arbitration clause shall specify the dispute(s), to be referred to arbitration under this clause together with the amount(s) claimed in respect of each dispute.
- (IV) The arbitrator may from time to time, enlarge the time

for making and publishing the award.

- (V) In case the advertisers move to any Court of Law he will pre-deposit all pending liabilities of the department.”

3. The petitioner states that it invoked the arbitration clause by a letter dated 03.10.2016, however, the respondent has failed to appoint the arbitrator in accordance with the said arbitration clause.

4. Ms Mini Pushkarna, the learned counsel appearing for the respondent submits that the letter invoking the arbitration clause was not received by the respondent and the respondent became aware of the same only during the course of the proceedings held on 21.10.2016 in OMP No. 38/2016. She has further drawn the attention of this Court to paragraph six of the said order which requires the respondent to appoint an arbitrator in accordance with law before the next date of hearing, i.e., 23.11.2016.

5. Learned counsel for the petitioner states that since the respondent has failed to appoint an arbitrator prior to the petitioner approaching this Court under Section 11 of the Act, the respondent has forfeited its right to do so. He further states that the respondent has also failed to appoint the arbitrator prior to 23.11.2016 as was directed by a Coordinate Bench of this Court on 21.10.2016.

6. It is apparent that there is no dispute as to the existence of the arbitration clause and further it is also admitted that the Commissioner, North DMC had failed to appoint the arbitrator within the time as specified. Thus indisputably, the Commissioner North DMC had forfeited the right to

appoint an arbitrator. Nonetheless, the respondent has appointed the sole arbitrator by a letter dated 23.11.2016 and thus this court was not inclined to entertain the present petition. However, it is noticed that the arbitrator appointed by the respondent is one of the panel lawyers of the respondent and therefore may be disqualified by virtue of Section 12 read with Schedule V and Schedule VII of the Act. In order to avoid further delay, it is directed that an arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC).

7. The representatives of the parties shall appear before the Co-ordinator, DIAC on 22.12.2016 at 11:00 a.m. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition is disposed of.

VIBHU BAKHRU, J

DECEMBER 06, 2016

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