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

+ ARB.P. 29/2017

INTEX TECHNOLOGIES (INDIA) LTD

THROUGH ITS AUTHORIZED REPRESENTATIVE

MR. AJAY KUMAR

..... Petitioner

Through: Ms Gargi Srivastava, Advocate.

versus

MANISH KOHLI PROPRIETOR M/S KHATRI

AGENCIES

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.04.2017

1. The present petition was moved on 11.01.2017 and notice was issued to the respondent on the said date for a hearing scheduled on 09.03.2017. On 09.03.2017, the respondent was represented by advocates and time was sought to file a reply. In view of this request, the respondent was granted two weeks time to file a reply from the said date. It was also clarified that no further time would be granted for completion of pleadings. Today, there is neither any representation on behalf of the respondent nor any reply has been filed on behalf of the respondents. In the circumstances, the matter has been heard in absence of any representation on behalf of the respondent.

2. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the Authorized Distributor Agreement dated 23.11.2009.

3. Clauses 13 and 14 of the said agreement are relevant and are quoted below:-

"13. GOVERNING LAW

(A) That this agreement shall be governed under the laws of India.

(B) All the disputes are subject to New Delhi jurisdiction only.

14. ARBITRATION

(A) That any dispute regarding this agreement shall be referred to arbitration of one arbitrator if agreed upon or to two arbitrators one to be appointed by each party and the arbitration will be governed under the Arbitration & Conciliation Act, 1996 or any amendment thereof."

4. In view of the disputes, the petitioner issued a notice dated 20.08.2014 invoking the arbitration clause. The petitioner also indicated that the petitioner would proceed before the sole arbitrator, Shri Rajesh Pathak, Advocate appointed by the petitioner.

5. However, the said proceedings were not pursued and the petitioner filed a suit before this Court (CS(OS) No.444/2015), which was subsequently transferred to the Additional District Judge-04, South-East, Saket Courts, New Delhi. The said suit was disposed of by an order dated 15.10.2016 by referring the parties to arbitration.

6. The petitioner, thereafter, issued a notice dated 24.11.2016 calling upon the respondent to accept the appointment of Shri Rajesh Pathak as per clause 14 of the Authorized Distributor Agreement. The respondent responded to the aforesaid notice by a letter dated 24.12.2016 disputing the

claims made by the petitioner as well as the jurisdiction of the courts at Delhi. The respondent further proceeded to unilaterally appoint one, Shri Vishal Kumar, Advocate as an Arbitrator to resolve the disputes between the parties.

7. It is apparent from the communications on record that the Authorized Distributor Agreement is not disputed. The contention that Courts at Delhi would not have jurisdiction to entertain the present petition is also unmerited in view of the express language of Clause 13(B) of the agreement in question. Plainly, the respondent has no authority to unilaterally appoint an arbitrator and the arbitrator so appointed has no jurisdiction to adjudicate the disputes between the parties.

8. In the circumstances, an arbitrator is required to be appointed. Accordingly, it is directed that an arbitrator be appointed under the Rules of Delhi International and Arbitration Centre (DIAC). The parties shall appear before the Co-ordinator DIAC on 17.05.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

9. The petitioner shall also ensure that the copy of this order is sent by courier and registered post to the respondent as well as to its counsel who had appeared on 09.03.2017.

10. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 20, 2017
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