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

+ **ARB.P. 140/2017**

PLANET GARMENTS PVT. LTD

..... Petitioner

Through Ms Dhanish Relan and Mr Abshita
Manocha, Advocates.

versus

CONTAINER CORPORATION OF INDIA LTD Respondent

Through Mr Rishi K. Awasthi and Mr Shyam
Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.03.2017**

1. The petitioner has filed the present application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed in respect of the disputes that are stated to have arisen between the parties in connection with the E-auctions conducted by the respondent on 18.07.2013, 29.07.2013, 26.09.2013 and 17.02.2014.

2. Tender conditions included an arbitration clause which is set out below:-

“12.0 DISPUTES

i) In case of any dispute, the same shall be referred to a single arbitrator, to be appointed by the **Container Corporation of India Ltd.** and the Arbitration

proceedings would be governed by 'Arbitration and Conciliation Act, 1996.

ii) The fees and expenses towards arbitration proceedings shall be shared, equally, by the parties to the dispute and shall be paid in advance to the auctioneer. The jurisdiction for appealing against the award in a court, or any other proceedings under the Arbitration Act, shall be that of courts in Delhi/New Delhi only."

3. The respondent does not dispute the existence of the arbitration agreement (arbitration clause). He however submits that the disputes sought to be raised by the petitioner are pending consideration before the Company Court in an application filed by the petitioner being CA 3274/2015 in Company Petition No. 471/2011. It is stated that the said petition was filed by IFCI Factors Limited seeking winding up of Krish International Private Limited.

4. It is apparent that the existence of the arbitration agreement (arbitration clause) is not in dispute. It is also admitted that certain disputes have arisen between the parties. The petitioner had invoked the arbitration clause by its letter dated 15.09.2016 and it is also admitted that the respondent has not appointed the arbitrator as required under the arbitration clause. Thus, notwithstanding that the petitioner has filed an application before the Company Court, an arbitrator is required to be appointed to adjudicate the disputes between the parties.

5. Accordingly, Mr S.M. Aggarwal, ADJ (Retired) (Mobile No. 9891983608) is appointed as an Arbitrator to consider the claims and counter claims of the parties. This is subject to the Arbitrator making the

necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

6. The Arbitrator shall fix his fees in consultation with the learned counsel appearing for the parties.

7. The parties are at liberty to approach the Arbitrator for eliciting the necessary disclosure and for further proceedings.

8. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 17, 2017

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