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

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Judgment delivered on: 26.07.2017

+ ARB.P. 261/2017

PUNJAB MARKETING

..... Petitioner

versus

**ZEVA ENGINEERING & MANAGEMENT
SERVICES PRIVATE LIMITED & OTHERS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Yeeshu Jain and Ms Jyoti Tyagi

For the Respondents : Mr Atul Krishna and Mr Rajiv Narain

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

26.07.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner by this petition, under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeks appointment of an Arbitrator.
2. The petitioner was awarded the Contract for erection of kiosks at different sites.
3. Disputes have arisen between the parties.
4. The petitioner has invoked the arbitration clause, which reads as under:-

“45. All disputes and differences of any kind whatsoever arising out of or in connection with this Contract whether during the progress of the work or after their completion shall be referred in writing by the Contractor to the Owner’s representative and the owner shall within 15 days from receipt make and notify its decisions thereon in writing to the Contractor.

Decisions, directions, clarifications, measurements, drawings and certificates with respect to any matter, the decision for which is specially provided for by these or other special conditions to be given and made by the Owner's Representative or by the Project Manager are matters which are referred to hereinafter as exempted matters and shall be final and binding upon the Contractor and shall not be set aside on account of non-observance of any formality, any omission, delay or error in proceeding in or about the same or on any other ground or for any reason and shall be without appeal. They shall be specifically excluded from the scope of arbitration proceedings hereinafter referred to.

Subject to the aforesaid, in the event of any dispute or difference between the parties hereto as to the construction or operation of this Contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Owner of any certificate to which the Contractor may claim to be and entitled to or if the Owner fails to make a decision within the aforesaid time, then and in any such case, but except in any of the exempted matters referred to in the above clause, the Contractor after 90 days of his presenting his final claim on the disputed matters, may demand in writing. that the dispute or difference be referred to and settled by two arbitrators, one to be nominated by the Owner and the other by the Contractor. The award of

the Arbitrators, or the Umpire who shall be appointed by the two arbitrators if there is any disagreement between the two Arbitrators before entering on the reference, shall be final and binding on both the parties. The provision as per the Arbitration and Conciliation Act 1996 shall apply to such arbitration. The arbitration venue shall be at New Delhi. The procedure for the arbitration shall be determined by the arbitrators. Costs of such arbitration shall be equally shared between the Owner and the Contractor.

The Contractor shall not, except with the consent in writing of the Owner in any way delay the carrying out of the work by reason of such matter, question or dispute being referred to arbitration but shall proceed with the work with all due diligence and shall, until the decision of the arbitrator is given, abide by the decision of the Owner/PMC and no award of the arbitrator shall relieve the Contractor of his obligations to adhere strictly to the Owner, the Owner's Representative's or the Project Manager's instructions with regard to the actual carrying out of the Work except as specifically affected by such award.”

5. The petitioner invoked arbitration by letter dated 30.01.2017.
6. Despite the petitioner having invoked arbitration, the respondent has not appointed Arbitrator.
7. Learned counsel for the respondent submits that without prejudice to his defence, he has no objection to the appointment of an independent Arbitrator.
8. Learned counsels for the parties submit that in view of the

quantum of dispute, a Sole Arbitrator be appointed instead of a three Member Tribunal.

9. Accordingly with the consent of parties, Mr Dalip Mehra, Advocate (Mobile # 9811084919) is appointed as the Sole Arbitrator to adjudicate the dispute between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act not being ineligible under Section 12(5) of the Act.

10. The Arbitral Tribunal shall examine the claims of the petitioner and the counter claims, if any of the respondents.

11. The Arbitrator shall fix his fee in consultation with learned counsel for the parties.

12. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

13. The petition is accordingly disposed of.

14. Order *Dasti* under signatures of the Court Master.

JULY 26, 2017/‘§n’

SANJEEV SACHDEVA, J