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

+ ARB.P. 203/2017

TAXATION PUBLISHERS (P) LTD Petitioner
Through Mr. Sanjeet Singh and Ms. Hrishika
Pandit, Advs.

versus

NAVEEN GUPTA Respondent
Through Mr. Vikram Mehta, Mr. Gaurav
Choudhary, Ms. Shweta Duggal and Ms. Raka
Chatterjee, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
16.05.2017

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1. This petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of a sole arbitrator for adjudication of the disputes between the parties.
2. The relevant facts are that the petitioner entered into a contract on 16.11.2011 with the respondent for developing the software as per the requirements of the petitioner. Disputes having arisen between the parties, in terms of the arbitration clause in the agreement, the petitioner invoked the arbitration clause and appointed Sh. Anil Mishra, Advocate as its arbitrator on 15.05.2013. The respondent was also requested to appoint their arbitrator inasmuch as in terms of the arbitration agreement, both the parties had to

appoint one arbitrator each and the two arbitrators had to then nominate the third arbitrator. The respondent by letter dated 29.06.2013 appointed their arbitrator Sh. Praveen Pahuja. The case of the petitioner is that the two arbitrators took no steps in the matter to appoint the third arbitrator despite lapse of more than one year. Vide legal notice dated 07.11.2014 the petitioner removed Sh. Anil Mishra, Advocate as its arbitrator and instead appointed, Sh. Mayank Mehandru, Advocate. The respondent has objected to the change of the arbitrator.

3. I have heard learned counsel for the parties.

4. Learned counsel for the respondent submits that the powers to remove the arbitrator appointed by the parties only vests with the court under Section 14 of the Act and the petitioner could not suo motu exercise the said powers. However, he has no objection in case the matter is referred to arbitration in terms of the arbitration clause.

5. The arbitration clause between the parties reads as follows:-

“13. Dispute Resolution

13.1 Any dispute or difference whatsoever arising between the First Party and the Second Party out of or relating to the construction, meaning, scope, operation, or effect of this Agreement or the validity or the breach, or the termination thereof (hereinafter referred to as a "Dispute") shall be referred to and finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996. This Agreement and the rights and obligations of the First Party and the Second Party hereto shall remain in full force and effect, except in so far as such rights and obligations are the subject matter of the arbitration proceedings, pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.

3. Venue of Arbitration: The seat of the arbitration shall be at New Delhi.

4. Appointment of Arbitrators. The arbitration shall be conducted before an arbitral tribunal composed of 3 (three) arbitrators, each of whom shall have experience of disputes of this nature. It is also hereby agreed that the Parties shall each appoint one arbitrator, with the two party-appointed arbitrators appointing the third arbitrator to act as chairman of the arbitral tribunal.”

6. Keeping in view the conduct of the arbitrator appointed by the petitioner, namely, Sh. Anil Mishra, Advocate, it is obvious that he has taken no steps pursuant to the arbitration clause. There is nothing on record to show that there was an attempt to appoint a third arbitrator. It is clear that the said arbitrator de facto failed to act without undue delay.

7. Accordingly, in terms of Section 14(2) of the Act, the mandate of Sh. Anil Mishra, Advocate is terminated. The petitioner is given two weeks time to nominate its arbitrator.

8. In order to avoid further delay in the matter, I appoint Mrs. Anjali Vohra, Advocate (Mobile No.: 9811087442) as the third arbitrator to adjudicate the disputes between the parties. The arbitration shall take place under the aegis of Delhi International Arbitration Centre(DIAC). The fee schedule shall be fixed accordingly.

9. The petition stands disposed of.

JAYANT NATH, J

MAY 16, 2017/rb