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

+ ARB.P. 584/2016

KAUSHAL KHARBANDA

..... Petitioner

Through: Mr Rahul Tewari, Advocate.

versus

MRS. SIMMI KUNDRA & ANR.

..... Respondents

Through: Mr Mayank Mohan, Advocate for R-1.

Mr Ruchit Dugar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.01.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying as under:-

“It is most respectfully prayed that the Hon'ble court be pleased to appoint an arbitrator with the directions to arbitrate the disputes between the parties in accordance with law resulted from the execution of the Collaboration Agreement dated 28.5.2012.”

2. It is seen that there is no arbitration agreement between the petitioner and respondent no.1 and the petitioner relies solely on the arbitration clause as contained in the Memorandum of Understanding (MoU) dated 28.08.2012 executed between the petitioner and respondent no.2. The said arbitration clause (as included in the said MoU) reads as under:-

“12. That in case of any dispute between both the parties at any time, then the same shall be referred before an mutually

decided persons i.e. Shri Prem Khurana S/o Late Shri J. R. Khurana, R/o E-60, Bali Nagar, New Delhi-110015 & Shri Dheeraj Sakhuja son of Late Shri D. B. Sakhuja, r/o A-3/282, Paschim Vihar, New Delhi (ARBITRATORS JOINTLY) and their decision is final and binding by both the parties without raising any hindrance/objection.”

3. The learned counsel for the respondent states that respondent no. 2 has already proceeded to appoint one Mr Mohd Arif, as the sole arbitrator to adjudicate the disputes between the parties. The learned counsel for the petitioner states that he is not aware of any such appointment. Plainly, respondent no.2 cannot unilaterally appoint an arbitrator and it would be necessary for the parties to first invoke the arbitration clause before proceeding to appoint an arbitrator to adjudicate their disputes.
4. It is seen that the arbitration clause provides for appointment of two arbitrators; that is not permissible under the Arbitration and Conciliation Act, 1996.
5. In any view of the matter, the petitioner has admittedly not invoked the arbitration clause as yet and, therefore, the present petition cannot be allowed at this stage.
6. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 17, 2017
MK