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

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Judgment delivered on: 09.08.2017

+ ARB.P. 362/2017

ARENA MOBILE PVT. LTD. THROUGH ITS DIRECTOR

..... Petitioner

versus

MICROSOFT CORPORATION (INDIA) PVT. LTD. & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr Gaurav Sarin with Mr. Lalit Khanna and Ms. Supriya Juneja, Advocates.

For the Respondents

: Mr. Rajeev K. Agarwal with Mr. Sanjay K. Sharma, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

09.08.2017

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 independent sole Arbitrator.

2. The petitioner was a retailer, *inter alia*, selling the products manufactured by the respondent Company. Agreement dated

01.07.2015 was executed between the petitioner and the respondent No.1, whereby, the petitioner was appointed as the Microsoft Priority Reseller.

3. During the pendency of the said agreement, certain disputes had arisen leading to the petitioner invoking the arbitration between the parties and further to the filing of the present petition.

4. The arbitration clause, as agreed to and as contained in Microsoft Priority Reseller Agreement dated 01.07.2015, reads as under:-

“5.9 Any dispute arising out of or in connection with this MPR Certification Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in India in accordance with the Arbitration and Conciliation Act 1996. The Venue of the arbitration shall be at New Delhi. A sole arbitrator shall be appointed by the Parties but in case of a disagreement on the appointment of sole arbitrator, the Parties hereto shall appoint one arbitrator each and a third arbitrator shall be appointed by the chosen the arbitrators. The

language of the arbitration shall be English. The governing law of this MPR Certification Agreement shall be the substantive law of India. During such conciliation or arbitration, the Parties shall, with the exception of those matters in dispute, continue to perform their respective obligations under the provisions of this MPR Certification Agreement. This MPR Certification Agreement shall be subject to the exclusive jurisdiction of competent Courts at New Delhi only.”

5. Learned counsel appearing for the respondent No.1 submits that he has no objection to appointment of an independent sole arbitrator.

6. Clause 5.9 stipulates that, in case, there is an agreement between the parties on the name of the arbitrator, a sole arbitrator is to be appointed. However, in case of a disagreement, the proceedings would be conducted by an arbitral tribunal comprising of three arbitrators, one each to be appointed by the parties.

7. Learned counsels for the parties are agreeable to appointment of Mr. Rakesh Tikku, Sr. Advocate, as the Sole Arbitrator.

8. Accordingly, Mr. Rakesh Tiku, Sr. Advocate, (Mobile No.9810025868) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties subject to the Arbitrator making the necessary disclosure under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

9. The Arbitrator shall adjudicate the claims of the petitioner and the counter claims, if any of the respondents.

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

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

12. The petition is accordingly disposed of.

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

SANJEEV SACHDEVA, J

AUGUST 09, 2017
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