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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 527/2017
WEB OVERSEAS LIMITED Petitioner
Through Mr.Vivek Kohli, Ms.Pruna Kohli and
Ms.Neha Rajpal, Advs.

versus

UNIVERSAL INDUSTRIAL PLANTS MANUFACTURING
COMPANY LIMITED Respondent
Through Mr.Kartik Nayar and Mr.Rishab
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **26.09.2017**

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) for appointment of an Arbitrator.
2. Some of the relevant facts are that the petitioner-company entered into discussion with the respondent for purchase of an Oxygen Nitrogen Plant. An offer was made by the respondent vide proforma invoice dated 05.11.2012.
3. Disputes having arisen between the parties, the petitioner filed a civil suit before the District Court Saket seeking recovery of Rs.20 lacs which had been paid to the respondent. The respondent chose to file an application under Section 8 of the Act seeking referral of the matter to arbitration. In view of the fact, there was an arbitration clause in the proforma invoice

dated 05.11.2012 by order dated 27.01.2017, the District Court Saket allowed the application of the respondent under Section 8 of the Act and referred the matter for arbitration to the Delhi International Arbitration Centre (*hereinafter referred to as 'DIAC'*).

4. Thereafter, it appears that two arbitrators have been appointed. On 28.02.2017, a letter was sent by DIAC to the parties regarding intimation of reference of the matter to DIAC and for filing the Statement of Claim and for paying the requisite fees. The respondent also by this letter of the same date appointed Justice J.D.Kapoor (Retd.) as the sole arbitrator as it was the stand of the respondent that under the proforma invoice, it was the right of the respondent to appoint the sole arbitrator.

5. When this matter came up for hearing before this court on 24.08.2017, this court had directed stay of both the proceedings (one pending before DIAC and one pending before the sole arbitrator Justice J.D.Kapoor (Retd.).

6. I have heard arguments of learned counsel for the parties.

7. Essentially, it is the case of the petitioner that in view of the order of the District Court Saket dated 27.01.2017, the arbitration has to take place under the aegis of DIAC who would as per their rules appoint the arbitrator. However, as per the respondent under the agreement, it was the respondent who had to appoint the arbitrator and hence they appointed an arbitrator. It is also stated that the order of the District Court Saket dated 27.01.2017 under Section 8 of the Act only directed that the arbitration proceedings shall be held under the aegis of DIAC and did not take away the power of the respondent to appoint a sole arbitrator.

8. After some arguments, the learned counsel for the parties have agreed

to the appointment of Justice J.D.Kapoor (Retd.) who is also on the panel of DIAC and requested him to continue the arbitration proceedings under the aegis of DIAC.

For some reasons, Justice J.D.Kapoor (Retd.) is not in a position to carry on the proceedings under the aegis of DIAC, the DIAC will appoint an appropriate person as per their rules, who shall then be the Sole Arbitrator to adjudicate the disputes between the parties.

9. I am told that after the stay order passed by this court on 24.08.2017, Justice J.D.Kapoor (Retd.) has terminated the proceedings on 04.09.2017 as the petitioner has not filed the statement of claim. As the said order was passed after the stay order passed by this court, the same is set aside.

10. In view of the above directions, the present petition stands disposed of. A copy of the order be sent to DIAC and to Justice J.D.Kapoor (Retd.).

11. Dasti.

JAYANT NATH, J.

SEPTEMBER 26, 2017/rk