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

+ **ARB.P. 297/2018**

M/S AVON HEALTHCARE PRIVATE LIMITED..... Petitioner

Through Mr Prashant Mehta, Mr Vikram Pradeep,
Advocates.

versus

TRADE INTERNATIONAL, THROUGH
MR. P.K HANDA, SOLE PROPRIETORSHIP Respondent
Through Mr Z.A. siddiqui, Advocate with Mr P.K.
Handa, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), inter alia, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of two separate agreements both dated 01.11.2012. Both the said agreements contain an identically worded clause which reads as under:-

“ Arbitration:

In the event of any disputes, differences controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns under, out of, in connection with, or in relation to, this Agreement (or the subject matter of this Agreement) including without limitation all disputes, differences, controversies and questions relating to the validity,

interpretation, construction, performance and enforcement of any provision of this Agreement or as to rights, liabilities or duties of the Parties (hereinafter referred to as a “Dispute”), the same shall be referred to binding arbitration at the request of any Party in writing, in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or alteration thereof for the time being in force. The arbitral tribunal shall comprise 3 (three) arbitrators: 1 (one) to be appointed by the Company. 1 (One) to be appointed by the Service Provider and the third to be appointed by the 2 (two) arbitrators whose decision in relation to any such Dispute shall be final and binding on the Parties hereto.

(b) Language and Venue

The arbitration proceedings shall be conducted in the English language. The venue of the arbitration shall be in Delhi, India.”

2. In terms of the arbitration clause both the petitioner and the respondent have nominated their respective arbitrators, however, the arbitrators have been unable to concur for appointment of a presiding arbitrator. Since the arbitration agreement is not disputed, it is necessary that a presiding arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of the said two agreements.
3. At this stage, the learned counsel for the parties request that instead of an Arbitral Tribunal of three arbitrators, a sole arbitrator be appointed to adjudicate the disputes between the parties. The parties further request that the arbitration be conducted under the aegis of Delhi International Arbitration Centre (DIAC).
4. In view of the request of the parties, Mr Justice V.K. Bali (Former

Chief Justice), (Mobile No. 9910300236) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising out of the two agreements dated 01.11.2012 and falling within the scope of the arbitration clause which is set out above. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under section 12(5) of the Act. The arbitration shall be conducted under the aegis of DIAC and under its Rules.

5. It is clarified that since the dispute between the parties arise from two separate agreements, there shall be two separate arbitration proceedings. Further, it will be open for the arbitrator to club the same if the issues are common.

6. The parties are directed to appear before the Coordinator DIAC on 01.06.2018 at 2.15 p.m. for further proceedings.

7. The petition is disposed of.

8. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

MAY 29, 2018

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