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

+ **ARB.P. 558/2017**

GAJENDRA NAGPAL Petitioner

Through: Mr Abhik Kumar and Mr Deepak
Girdhar, Advocates.

versus

RAM MOHAN GUPTA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.03.2018**

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 relation to a Settlement Agreement dated 02.09.2013.

2. The petitioner claims that in view of the disputes that have arisen in relation to the said Agreement, he issued a notice dated 14.09.2015 to the respondent invoking the arbitration clause. In the aforesaid notice, the petitioner also indicated that he had appointed Shri Nishant Ahlawat (Advocate) as his nominee arbitrator and called upon the respondent to appoint his nominee as the second arbitrator. The respondent responded to the aforesaid notice by a letter dated 10.10.2015 disputing the contents of the aforesaid notice. However, the respondent also nominated Justice Bharat Bhushan, a former Judge of the Punjab and Haryana High Court, as his

nominee arbitrator.

3. Since Mr Ahlawat had acted on behalf of the petitioner, he was not eligible to act as an arbitrator in respect of the disputes involving the petitioner. Accordingly, the petitioner sent another notice dated 10.08.2016 nominating Justice I. P. Vashisht, a former Judge of the Punjab and Haryana High Court as his nominee in place of Mr Nishant Ahlawat.

4. The learned counsel appearing for the petitioner states that the said Arbitrators have not held any proceedings and have not taken any steps to appoint the third Arbitrator. He further claims that the petitioner also sent further communications requesting that a meeting of the Arbitrators be held but has received no response to the said communications.

5. The present petition was taken up on 25.09.2017 and this Court had directed issuance of notice. Since the respondent was not available at the said address and his whereabouts could not be ascertained, the petitioner applied for substituted service and on 15.11.2017, this Court directed that the respondent be served through publication in *Statesman* (English Edition) and *Veer Arjun* (Hindi Edition).

6. The notices were published in the *Statesman* and *Veer Arjun* on 09.01.2018. Although the respondent is served, none appears on his behalf.

7. Since, there has been no communication from the Arbitrators and further no proceedings have been undertaken by them, this Court is of the view that the present petition is liable to be allowed and an Arbitral Tribunal is required to be constituted.

8. Accordingly, it is directed that an Arbitral Tribunal be constituted by

the Delhi International Arbitration Centre (DIAC). The arbitration will be conducted under the aegis of DIAC and in accordance with its Rules. The parties will appear before the Coordinator, DIAC on 20.03.2018 at 11:00 AM for further proceedings.

9. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MARCH 09, 2018/MK