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

+ **ARB.P. 736/2017**

**INTERNATIONAL MARCOM ADVISORY AND
RESEARCH CORPORATION (P) LTD**

..... Petitioner

Through: Mr Rajesh Kumar, Advocate.

versus

EVENTS LIVE PVT LTD

..... Respondent

Through: Mr Raghav Shankar and Mr Nakul
Nayale, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **26.02.2018**

1. The petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed for adjudication of the disputes that have arisen between the parties in relation to an agreement dated 06.07.2017.
2. The said agreement contains an arbitration clause, which is set out below:-

“ARTICLE VI – GOVERNING LAW & DISPUTE RESOLUTION

- 6.1 THAT IF ANY DISPUTE(S) OR DIFFERENCE(S) SHALL ARISE BETWEEN THE PARTIES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE PARTIES SHALL ATTEMPT, FOR A PERIOD OF THIRTY DAYS FROM THE RECEIPT OF A NOTICE FROM THE OTHER PARTY OF THE EXISTENCE OF A DISPUTE(S), TO SETTLE SUCH DISPUTE(S) BY MUTUAL DISCUSSIONS BETWEEN THE PARTIES. THAT IF THE SAID DISPUTE(S) CANNOT BE SETTLED BY MUTUAL DISCUSSIONS WITHIN THE THIRTY-DAY PERIOD PROVIDED ABOVE, EITHER PARTY MAY REFER THE MATTER TO ARBITRATOR(S).

6.2 THAT THE ARBITRATION PROCEEDINGS SHALL BE HELD UNDER THE PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT, 1996 OR ANY OF ITS SUBSEQUENT AMENDMENTS. THE ARBITRATION PROCEEDINGS SHALL BE IN ENGLISH. THE VENUE OF ARBITRATION PROCEEDINGS SHALL BE DELHI ONLY. THE COURTS/TRIBUNALS AT DELHI SHALL HAVE THE EXCLUSIVE JURISDICTION OVER ANY DISPUTES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. DURING THE CONDUCT OF ARBITRATION PROCEEDINGS, THE PARTIES SHALL BEAR THE COST OF THE PROCEEDINGS. EVENTUALLY, ALL COSTS AND EXPENSES OF THE ARBITRATION SHALL BE BORNE BY SUCH PARTY IN SUCH MANNER AS AWARDED BY THE ARBITRAL TRIBUNAL.”

3. The petitioner submits that it had issued a notice dated 25.08.2017 invoking the arbitration clause and calling upon the respondent to attempt to settle the disputes amicably in terms of Clause 6.1 and 6.2 of the Agreement.

4. The respondent responded to the said letter by disputing the validity of the said notice. The respondent further claims that the invocation of the arbitration clause and nomination of the arbitrator by the petitioner in its communication dated 26.05.2017 were pre-mature and contrary to the express language of the arbitration clause.

5. The learned counsel appearing for the respondent also submits that since the said notice was on instruction of Mr Gaurav Sachdeo, Director of the petitioner company, the same could not be considered as a valid notice. He further stated that there are serious disputes as to the authority of Mr Gaurav Sachdeo to represent the petitioner company.

6. It is also contended that since the arbitration clause in the Agreement contemplates that the parties must, in the first instance, attempt to amicably resolve the disputes, it would be necessary for the parties to make such attempt before proceeding to the arbitration.

7. The learned counsel appearing for the respondent also requests that a former Judge of this Court be appointed as an Arbitrator.

8. In view of the aforesaid submissions, this Court considers it apposite to appoint Mr Justice R.C. Jain, Retired (Mobile No. 9818000380) as the sole arbitrator to adjudicate the disputes that have arisen between the parties. 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.

9. Since the learned counsel appearing for the respondent has submitted that the parties ought to make an attempt to amicably resolve the disputes before proceeding with the arbitration, this Court considers it apposite to direct the Arbitrator not enter reference for a period of six weeks from today. In the meanwhile, the parties may attempt to resolve their disputes amicably. In the event the parties are able to resolve the disputes within a period of six weeks from today, they shall communicate the same to the Arbitrator and no further steps would be required to be taken in furtherance of the arbitration proceedings. However, if the parties are unable to resolve their disputes amicably, they shall appear before the Arbitrator on 20.04.2018 subject to the convenience of the Arbitrator for a preliminary hearing.

10. The petition is disposed of in the above terms. All rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

FEBRUARY 26, 2018/RK