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

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Date of Decision: 28.10.2024+ **ARB.P. 1076/2024****SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED**

.....Petitioner

Through: Mr. Sameer Jain, Ms. Jayashree
Parihar and Ms. Aastha Sharma,
Advs.

versus

SHREE SANT KRIPA APPLIANCES PRIVATE LIMITED

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent. These disputes stem from a "Sale and Supply Agreement" dated 09.12.2019 (hereinafter '*the Agreement*'), executed between the parties. Under the terms of this Agreement, the respondent was appointed as a distributor to purchase products from the petitioner and resell them to other distributors, retailers, or dealers within a defined territory.

2. The arbitration clause in the Agreement between the parties, is in the following terms : -

"14.2 Any and all disputes, controversies or claims between the Parties arising out of or in connection with this Agreement (including its existence, validity or termination and with respect to contractual or



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non-contractual obligations) shall be settled amicably within a period of fifteen (15) business days after written notification from one Party to the other that a dispute or difference has arisen. In the event that amicable settlement is not reached within the said fifteen (15) business days, the difference or disputes shall be finally resolved by arbitration by a sole arbitrator nominated by Samsung authorized person. The seat and venue for arbitration shall be New Delhi, and arbitration proceedings shall be conducted in the English language in accordance with the rules provided under Indian Arbitration & Conciliation Act, 1996; provided, however, that each party may enforce its or its affiliates' intellectual property rights in any court of competent jurisdiction including by way of an application for equitable relief. The arbitral award shall be final and binding on the Parties."

3. The Agreement allowed the petitioner to provide various rebates (including trade discounts, sales incentives, and target incentives) to the respondent, who was required to pass these rebates to other distributors, resellers or beneficiaries. The Agreement placed the sole responsibility on the respondent to ensure the rebates reached the intended beneficiaries. In line with this, the petitioner issued rebate credit notes for a "March Scheme".
4. Disputes between the parties emerged when the respondent failed to fulfil its obligation to pass the benefits of "March Scheme" to other distributors, resellers or beneficiaries. Pursuant to this default, the petitioner sent several reminder emails urging the respondent to fulfil its payment obligations.
5. When the respondent failed to act on these reminders, the petitioner issued a Demand Notice on 15.03.2024, informing the respondent that if payments were not made to other distributors, resellers or beneficiaries, the petitioner would be compelled to pay the dealers directly and would seek indemnification from the respondent, as specified in clauses 5.1 and 5.3 of



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the Agreement.

6. On 22.03.2024, the respondent replied to the Demand Notice, alleging that a settlement had been reached in which the respondent's dues to the resellers/beneficiaries would be addressed only after its own alleged claims against the petitioner were settled.

7. In response to the aforesaid assertion, the petitioner issued a communication dated 09.04.2024, refuting the respondent's claims. The petitioner reiterated that since the respondent had failed to distribute the March Scheme benefits to the intended recipients, the petitioner would fulfil this obligation directly and seek indemnification from the Respondent in terms of clauses 5.1 and 5.3 of the Agreement.

8. On 23.05.2024, the petitioner issued a 'Notice of Dispute' to the respondent, stating that due to the respondent's failure to pass on the March Scheme benefits to resellers/beneficiaries, the petitioner had made payments on the respondent's behalf and called upon the respondent to reimburse the said payments.

9. When no response was received, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the 'A&C Act') invoking the arbitration clause of the Agreement. However, the respondent failed to respond to the notice.

10. Therefore, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole arbitrator to adjudicate the dispute.

11. Notice in the present petition was issued on 23.07.2024.

12. An affidavit of service has been filed wherein it has been brought out that the respondent has been duly served by hand on 31.07.2024 and also



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through email. However, there is no appearance on behalf of the respondent.

13. Since the existence of arbitration clause is evident from a perusal of the Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties, as prayed for, as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (INDIA) Limited***, (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, (2019) 5 SCC 755.

14. Accordingly, Mr. Anirudh Sharma, Advocate (Mob. No.: +91.9999080715) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

17. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. The parties shall share the arbitrator's fee and arbitral costs, equally.

19. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

20. Needless to say, nothing in this order shall be construed as an



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expression of this court on the merits of the case.

21. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 28, 2024/at