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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 311/2016

YATRA ONLINE PRIVATE LIMITED

..... Petitioner

Through: Mr. Rakesh Mukhija and Ms. Priyanka
Sharma, Advocates.

versus

MINDLOGICX INFRATEC LIMITED

..... Respondent

Through: Mr. Vikas Kumar and Mr. Manish Paliwal,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

07.11.2016

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of a sole arbitrator to adjudicate the disputes between the parties arising out of a service provider agreement dated 27th November 2012 ('Agreement') entered into between them.

2. The objection raised by the Respondent to the appointment of an Arbitrator stems from the arbitration clause in the Agreement which reads as under:

“13.10 Arbitration. Parties hereby agree that they shall work together to resolve any disputes and/or differences that may arise under this Agreement and each Party shall notify in writing the other Party as to the existence of any Disputes and/or Differences and shall enter into such deliberations and discussions to resolve the same in 30 days. In the event that disputes do not get amicably settled within the said period of 30 days, the said disputes and or references shall be referred for arbitration pursuant to the Arbitration and Conciliation Act, 1996 and any other

Indian law shall settle the dispute for the time being in operation. The place of arbitration shall be New Delhi and the language of arbitration shall be English. The Parties shall jointly appoint a sole arbitrator. If the parties do not agree on a sole arbitrator within fifteen (15) days of the date of service of notice of arbitration by the Party initiating arbitration, the sole arbitrator shall be appointed by the appropriate court in Bangalore. The arbitration award shall be final and binding on the parties.”

3. It is submitted by learned counsel for the Respondent relying on ***G.E. Countrywide Consumer Financial Services Limited v. Surjit Singh Bhatia and Jaspal Kaur 129 (2006) DLT 393*** that parties had agreed that the sole Arbitrator would be “appointed by the appropriate Court in Bangalore”. He points out that the services were rendered to the Respondent in Bangalore. The Respondent is also located in Bangalore. According to him, the Petitioner was in a dominant position and that is why the parties had agreed that the place of arbitration would be New Delhi. He also points out that the agreement was executed in Haryana.

4. The above submissions are to no avail after the decision of the Constitution Bench of the Supreme Court in ***Bharat Aluminium Company Ltd v. Kaiser Aluminium Technical Service Inc (2012) 9 SCC 552*** which held that the Court within whose jurisdiction the cause of action arises as well as the Court within whose jurisdiction the place of arbitration is situated will have the jurisdiction. In the present case, the parties have agreed that the place of arbitration will be New Delhi.

5. Learned counsel for the Respondent then submitted that the parties were agreeable to settlement of an admitted amount. However, learned counsel for the Petitioner points out that despite the copy of invoices having been

submitted to the Respondent, the latter claimed that they have no records. Therefore, no settlement appears possible at this stage.

6. This Court accordingly, proposes Mr. Neeraj Malhotra, (Mobile No: 9811091991) as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The proposed Arbitrator will fix his own terms and communicate them to the parties. In the first instance, the proposed Arbitrator will make a disclosure in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

7. Subject to the compliance with the above direction, the parties shall appear before the proposed Arbitrator on 7th December 2016 at 4 pm or on some other day and time of mutual convenience as will be communicated by him to the parties at least one week in advance. The venue for the first hearing will be arranged by the Petitioner and communicated to the proposed Arbitrator and the Respondent one week in advance. The expenses thereof shall be borne by both the parties equally.

8. The petition is disposed of. A copy of this order be communicated to Mr. Neeraj Malhotra forthwith. Order *dasti*.

S. MURALIDHAR, J

NOVEMBER 07, 2016
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