

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

% *Order delivered on: 30th March, 2016*

+ **ARB. P. No.334/2015**

CENTRE FOR DEVELOPMENT OF TELEMATICE Petitioner
Through Mr.Gaurav Sarin, Adv. with Mr.Mukul
Chandra & Mr.Ajitesh, Advs.

versus

XALTED INFORMATION SYSTEMS PVT. LTD. & ANR Respondents
Through Mr.Samir Malik, Adv. with Ms.Pooja
Nuwal, Adv. along with Mr.A.C.
Narang, Representative, in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of three Arbitrators to adjudicate the disputes which have arisen between the parties in respect of the Memorandum of Understanding (MOU) dated 7th June, 2006 and subsequently, Addendum to MOU dated 20th March, 2009.
2. Brief facts of the case are that the petitioner is a Society registered under the provisions of Societies Registration Act and an autonomous body administered by the Ministry of Communication and Information Technology, Department of Telecommunications, Government of India. The petitioner acts as Telecom Technology Centre of the Government of India and is

involved in development of total telecommunication solutions for our national needs including Fixed Line PSTN system, Advance Intelligent Network Solutions, Access Network Products, SDH, WDM Systems, Satellite Communication Systems, Network Management System etc. The petitioner was established in August, 1984 as an autonomous body. It has been vested with full authority and total flexibility to develop state of the art telecommunication technology to meet the needs of the Indian telecommunication network.

3. The respondent No.1 is a Private Limited Company and claims to be engaged in development/ deployment of state of the art software for fraud detection and prevention, interconnect billing, lawful interception services etc., besides development of SDH Transport and Broad Band Access systems. Respondent No.2 is the Chairman & CEO of respondent No.1 Company.

4. The allegations made in the petition are that the petitioner over the situations of deceit, fraud, unlawful economic and criminal activities perpetrated nationally and internationally through telecom and data networks and also with a view to meet the requirements of security agencies for fraud detection, prevention and lawful interception had held extensive discussions with the respondents. The respondent No.2, particularly represented to the petitioner that respondent No.1 was *“working with both MTNL and BSNL and has been entrusted access to Telephone Exchanges local, national, and international long distance to securely handle daily millions of CDRs and various telcos interconnect operations. Xalted claims to have well proven software solution, domain knowledge in lawful interception and has successfully implemented this in a dynamic environment abroad handling*

daily billions of CDRs meeting stringent technical and operational requirements. Further, Xalted also claims that it has its in-house developed software solution for Fraud Management and significant domain knowledge of various dimensions of Frauds and reportedly have implemented a nationwide Fraud Management System in BSNL GSM network."

Believing the assurances and representation of the respondents to be true, the petitioner entered into a Memorandum of Understanding dated 7th June, 2006 with respondent No.1 to pool the developmental resources to jointly enhance existing platform, design and develop state of the art platforms and services for use in telecom and data networks by national security agencies for lawful interception, fraud prevention, provide secure telecom systems and also market jointly products and solutions abroad for providing world class products, solutions and services to meet the above requirements for a mutually agreed term of 7 years. The said MOU outlined the responsibility of activities to be carried out by each party, framework for MOU monitoring, implementation, methodology, IPR etc.

5. Pursuant to the MOU, Scope of Work and the mutual obligations of the parties were specifically recorded/provided for, vide Addendum to the MOU dated 20th March, 2009. The Addendum defines the scope of work, price, payment terms, delivery schedule, roles and responsibilities etc. The project was to be completed by 31st December, 2009. (MOU and Addendum are hereinafter collectively called as "Contract"). The copies of the same have been filed.

6. It is stated in the petition that in discharge of its obligations under the Addendum and to show its bonafide and seriousness for the project, petitioner

made an upfront payment of 25% i.e. Rs.12.25 crores to respondent No.1 as per Clause C (a) thereof and to this effect, respondent No.1 provided a Corporate Guarantee in favour of the petitioner to be valid as per its Clause 2.1.1, until the implementation of the project by 31st December, 2009. The copies of the A/c payee cheque evidencing payment of Rs.12.25 crores and Corporate Guarantee provided by respondent No.1 in favour of the petitioner have been filed. Despite the petitioner's earnestness in discharging its part of the contractual obligations, the respondents miserably failed and neglected in fulfilling their contractual obligations.

7. The dispute has arisen between petitioner and respondents with respect to the obligation of the parties, activities performed thereunder and interpretation of the terms of Contract. Clause 10 of MOU dated 7th June, 2006 provides a mechanism for settlement of such disputes through arbitration. The said clause is reproduced here as under:-

“Governing Law, Dispute Resolution and Jurisdiction

a. Any controversy arising out of, or in relation to, this MOU, the interpretation thereof, the activities performed hereunder shall be referred to ED (C-DOT) and Chairman, Xalted who shall mutually resolve such issues.

b. This MOU shall be governed by, and be construed in accordance with provisions of the Indian Arbitration and Conciliation Act 1996. Any claim, dispute or arising out of or in relation to this MOU, the interpretation thereof the activities performed hereunder or the breach thereof, which cannot, within a period of thirty (30) days from receipt of notice by the Defaulting Party, be satisfactorily resolved by mutual understanding between the Parties, shall be finally settled through arbitration.

Failing resolution of the dispute within the above period of thirty (30) days, either Party may commence arbitration proceedings in order to resolve the dispute.

The venue of arbitration shall be Delhi and the arbitration proceedings shall be conducted in the English language.

The Parties agree that the arbitration award shall be final and binding on the Parties.

The disputes between the parties will be governed by Laws of India.

The Parties submit to be jurisdiction of the Courts at Delhi.”

8. The petitioner submits that they have exhausted all possible methods of resolving the outstanding disputes with the respondents through discussions, personal meetings etc. The petitioner served notice dated 31st March, 2014 to resolve all the pending issues and gave an opportunity to the respondents to resolve the same amicably as per Clause 10(b) of the MOU dated 7th June, 2006. Pursuant to that notice, the petitioner held three conciliation meetings with the respondents on 16th June, 2014, 7th July, 2014 and 17th July, 2014, but they also could not yield the desired result. Prior to these conciliation meetings, petitioner also tried to resolve the outstanding issues with the respondents through various earlier correspondences. The petitioner also held meeting on 30th January, 2013 with the respondents, voicing its concerns arising out of non-performance of their contractual obligations, but no remedial step/action has been taken from the respondent's side in resolving the outstanding disputes.

9. The petitioner sent a legal notice dated 15th September, 2014 through its Advocate to the respondents invoking the Arbitration Clause in the Contract so that issues/ disputes between the parties can be adjudicated in accordance with and in terms of the procedure prescribed under the Arbitration and Conciliation Act, 1996. By way of the said legal notice, the petitioner also nominated Mr. R.K.Bhatnagar, former Advisor (T), Department of Telecom as the Arbitrator to adjudicate upon the disputes that have so arisen and thus, called upon the respondents to agree on him within a period of 30 days from the date of receipt thereof.

10. In response to the said legal notice, the respondents through their Advocate sent a reply dated 14th October, 2014 to the petitioner's Advocate raising certain pleas.

11. When the matter was listed before Court, learned counsel for the respondents has not denied the fact that there is a dispute between the parties. The agreement contains the arbitration clause. Notice for invocation was received. It is admitted that the agreement is silent about the number of Arbitrators of the Arbitral Tribunal.

12. As per Section 10 of the Arbitration and Conciliation Act, 1996, (1) the parties are free to determine the number of arbitrators, provided that such number shall not be an even number. (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator. Both parties left to the Court and did not object if the sole Arbitrator is appointed to adjudicate the disputes between the parties and it would be appropriate if an expert be appointed.

13. In view of the nature of the present dispute, it is a fit case where the sole Arbitrator be appointed to adjudicate the disputes between the parties.

14. Hon'ble Mr. Justice Anil Kumar, Retired Judge of this Court (Mobile No.9818000140) is appointed as sole Arbitrator to adjudicate the disputes arising out of the agreement in question between the parties as mentioned in the present petition.

15. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

16. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration.

17. The Arbitrator shall also file an affidavit of "no conflict of interest". The fees of the learned Arbitrator shall be in terms of the Schedule of the Arbitration and Conciliation (Amendment) Act, 2015.

18. The petition is accordingly disposed of.

19. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be communicated to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

MARCH 30, 2016