

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

3

+

ARB.P. 500/2015

PROGNOSYS E SERVICES PVT. LTD

..... Petitioner

Through: Mr. Sonal Jain with Mr. Saharsh
Jauhari, Advocates.

versus

NIIT -GIS LTD

..... Respondent

Through: Mr. Siddharth Joshi, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

03.11.2016

%

1. There are two objections raised by the Respondent to the prayer in this petition under Section 11 (5) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator to adjudicate the disputes between the parties arising out of a Letter of Intent ('LoI') dated 27th July, 2010 and the further LoI dated 21st July, 2011 whereunder the Petitioner was to carry out various surveys in Bangalore for the Respondent in relation to the Restructured Accelerated Power Development and Reforms Program.

2. The first objection is that as a result of criminal complaints filed both by the Respondent and IFCI Factors Ltd. against the Petitioner for committing forgery for availing factoring service from the latter, investigation is in progress and some of the directors of the Petitioner have also been arrested and released on bail. It is accordingly submitted that there should not be a

simultaneous reference of the disputes to arbitration during the pendency of the criminal proceedings.

3. As far as the above objection is concerned, the Court is of the view that any remedy that is available to the Respondent in criminal law is independent of the enforcement of the civil liability by one party against other arising out of the LoI. Consequently, this objection cannot be put forth to deny the appointment of an Arbitrator in terms of the LoI to adjudicate the disputes between the parties on the civil side.

4. The second objection raised is that in terms of the relevant clause in the LoI i.e., Clause 20.9. the parties shall first attempt to resolve the dispute through conciliation. It is stated that inasmuch as the Petitioner has not approached the Respondent for conciliation, the request for appointment of an Arbitrator is premature.

5. It is seen that the Petitioner issued a legal notice invoking the arbitration Clause 20.9 of the LoI on 27th April, 2015 and a reply thereto was sent on 7th May, 2015. Nowhere in the reply has the Respondent asked the Petitioner to come forth to resolve the disputes through conciliation. There was sufficient time and opportunity for the Respondent to have proceeded with the conciliation. Consequently, neither of the objections to the appointment of an Arbitrator are tenable.

6. The fact that there is an arbitration clause to which the Petitioner and the Respondent are parties and the fact that the said clause was invoked by the Petitioner and a legal notice was sent to the Respondent seeking the

reference of the disputes to arbitration is not denied by the Respondent.

7. In the circumstances, this Court appoints Mr. Justice Vikramajit Sen (Mob. Nos.8447333366; 9818000290), a former Judge of the Supreme Court as the sole Arbitrator for adjudication of the disputes between the parties, including their claims and counter-claims. The learned Arbitrator shall fix his own terms and communicate them to the parties. The parties are directed to appear before the learned Arbitrator on 7th December, 2016 at 4 pm or such changed time and/or date that the learned Arbitrator finds convenient which will be communicated to the parties at least ten days in advance. The venue for the first hearing will be fixed by the Petitioner and communicated to the learned Arbitrator and the Respondent at least one week prior to the date fixed. The expenses for the hearing incurred shall be equally shared by the parties.

8. The petition is disposed of in the above terms. A certified copy of this order be delivered to the learned Arbitrator forthwith.

S. MURALIDHAR, J

NOVEMBER 03, 2016

Rm