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

+ **ARB.P. 214/2016**

QUOV ANTIS TECHONOLOGIES PVT. LTD. Petitioner

Through Mr Vikas chabra, Advocate.

versus

IYOGI TECHNICAL SERVICES PVT. LTD. Respondent

Through Mr Nakul Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.05.2017

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to Master Service Agreement dated 01.07.2014. The said agreement includes a dispute resolution clause which reads as under:-

“10.3 Governing Law: Venue and Dispute Resolution.

The Agreement is governed by the laws of the India without reference to any conflict of laws principles that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Where the subject matter of the dispute is not capable of settlement by arbitration under law, Parties irrevocably consents to the personal jurisdiction of the courts located in New Delhi for any suit or action arising from or related to this Agreement, and waives any right Parties may have to object to the venue of such courts.

In the event of disputes, differences, claims and questions of whatever nature arising between the Parties hereto out of this Agreement or in any way relating hereto or any term, condition, validity, construction, meaning, scope, operation, effect or consequences or provision herein mentioned or the construction or interpretation thereof or otherwise in relation hereto, the Parties shall first endeavour to settle such differences, disputes, claims or questions by friendly mutual consultation and failing such mutual settlement through construction process, the issues shall be referred to an arbitration panel comprising of three arbitrators, one to be appointed by Client and the other by the Quovantis and such arbitrators shall jointly appoint a presiding Arbitrator before commencing the arbitration proceedings. Each Party will bear its own arbitrator's fees associated with the arbitration. Each Party shall bear the cost of their own respective arbitrators, and shall share the cost and fees of the third presiding arbitrator equally. The arbitration shall be conducted in terms of and in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any modifications or amendments thereto, or any re-enactment for the time being in force and that the arbitration proceeding shall be conducted in English language and the venue for the arbitration shall be in New Delhi. Award shall be rendered in English. The procedural law of the Arbitration shall be Indian law. The award of the arbitration shall be final and conclusive and binding upon the Parties. If either Client or Quovantis fails to appoint their respective arbitrators within thirty (30) days after the request by the other Party, then such arbitrator(s) shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules made there under including any modifications, amendments and future enactments thereto. If the first two arbitrators fails to agree on the third arbitrator within thirty (30) days following the appointment of the second arbitrator, then the third arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules made there

under including any modifications, amendments and future enactments thereto. During the pendency of any arbitration, the Parties shall continue to perform their respective obligations under this Agreement.”

2. In terms of the arbitration clause, the differences, disputes, claims or questions by friendly mutual consultation and failing such mutual settlement, the issues shall be referred to an arbitration panel comprising of three arbitrators. There is no dispute as to the existence of the agreement. It is also not in dispute that the parties have been unable to constitute an arbitration tribunal. In the aforesaid circumstances, an arbitral tribunal is required to be appointed.
3. The learned counsel for the parties request that instead of a panel of three arbitrators, a sole arbitrator be appointed to adjudicate the disputes between the parties.
4. In view of the above, Ms Gunjan Sinha, Advocate (Mobile No. 9811387311) is appointed as a sole arbitrator to adjudicate the disputes 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. The arbitrator shall fix the fees in consultation with the counsel for the parties. The parties are at liberty to approach the arbitrator for further proceedings.
5. It is clarified that all rights and contentions of the parties are reserved.
6. The petition is disposed of.

VIBHU BAKHRU, J

MAY 25, 2017

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