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

+ **ARB.P. 329/2017**

HCL INFOSYSTEMS LIMITED

..... Petitioner

Through Ms. Ranjana Roy, Ms. Vasudha and
Ms. Shweta Vashist, Advocates.

versus

NATIONAL INFORMATICS CENTRE

..... Respondent

Through Mr. Jaswinder Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.05.2017**

1. This is a 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 in relation to the Empanelment Order dated 14.11.2011.
2. The said agreement includes an arbitration clause, which reads as under:

"17. Arbitration:

- 17.1 If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived there from, the parties agree to submit that dispute to arbitration under the ICADR Arbitration Rules, 1996.

17.2 The Authority to appoint the arbitrator(s) shall be the International Centre for Alternative Dispute Resolution (ICADR).

17.3 The Centre for Alternative Dispute Resolution will provide administrative services in accordance with the ICADR Arbitration Rules, 1996. "

3. The petitioner invoked the Arbitration Clause and by a letter dated 03.03.2017 requested the International Centre for Alternative Dispute Resolution (ICADR) to appoint an arbitrator. In response to the said letter, ICADR called upon the petitioner to serve a notice of request for arbitration on the respondent and thereafter approach ICADR for appointment of an arbitrator. In response to the said letter, petitioner clarified that the notice of request for arbitration had already been served on the respondent.

4. In the meanwhile, the petitioner also filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 praying for interim relief [being OMP (I) (Comm) No.94/2017].

5. Thereafter ICADR sought some clarifications regarding the petitioner's application for interim relief. The clarifications as sought were provided. Thereafter ICADR sent a letter dated 01.05.2017 stating that no useful purpose will be served by appointment of an arbitrator at this stage since the petitioner had filed a petition under Section 9 of the Act.

6. The filing of a petition under Section 9 for interim measures cannot be a ground for refusal to appoint an arbitrator. It is thus apparent from the above that ICADR has failed to appoint an arbitrator as per its Rules.

7. Accordingly, Mr. Akshya Makhija, Advocate (9810079901) is appointed as the sole arbitrator to adjudicate disputes between the parties. This is subject to the arbitrator making necessary disclosure under Section 12 of the Act not being ineligible under Section 12 (5) of the Act.

8. Except to the extent that the arbitrator has been appointed, the arbitration shall be conducted under the ICADR Arbitration Rules 1996 as agreed between the parties. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosures.

9. The parties are further directed to approach the Secretary General, ICADR for further proceedings.

10. The petition is disposed off.

VIBHU BAKHRU, J

MAY 18, 2017
dr