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

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Judgment delivered on: 28.08.2017

+ ARB.P. 422/2017

M/S CARETEL INFOTECH LIMITED

..... Petitioner

versus

M/S SPARK BROADBAND PVT LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjeev Sagar & Mr. Navin Arora, Advs.

For the Respondents : None

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. None appears for the respondent. None appeared on behalf of respondent even on 18th August, 2017 despite service. The respondent is accordingly proceeded ex-parte.

2. The petitioner by way of the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks appointment of an Arbitrator.

3. As per the petitioner, the Respondent M/s Spark Broadband Pvt Ltd was earlier known as M/s Wamika Broadband Pvt. Ltd.

4. The petitioner and the respondent entered into a Call Centre Agreement dated 01st April, 2013. The agreement was renewed from time to time.

5. As per the petitioner, some of the invoices raised by the petitioner have not been paid and some of the cheques issued by the respondents have been dishonoured and returned unencashed from the bank leading to disputes between the parties.

6. The petitioner has invoked the arbitration clause by letter dated 11th March, 2017.

7. The arbitration clause between the parties reads as under:-

“12. Arbitration

Any disputes, differences or question which may arise at any time hereafter between WAMIKA BROADBAND and CARTEL touching the true constructions of this Agreement or the rights and liabilities of the parties hereto, the same shall be referred to the decision of a Sole Arbitrator to be appointed by the Director of WAMIKA BROADBAND in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The venue of such Arbitration shall be at New Delhi and the courts at Delhi alone shall have the exclusive jurisdiction to deal with the Arbitration proceedings and the Awards in accordance with law.

13. Jurisdiction

In case of a dispute arising out of the present Agreement, the Courts of Delhi will only have the exclusive

jurisdiction to entertain the disputes with regard to this Agreement.”

8. Learned counsel for the petitioner submits that since the respondent has failed to appoint an Arbitrator as stipulated by the arbitration clause despite service of the notice invoking arbitration dated 11th March, 2017, the respondent is now disqualified from appointing an Arbitrator. Accordingly, he prays that an independent Sole Arbitrator be appointed.

9. Since Respondent has failed to appoint an arbitrator despite a request being made by the petitioner, the respondent is disqualified from appointing an arbitrator.

10. In view of the above, Mr. N.P. Kaushik (Retd.) former Additional District Judge (Mobile No. 9910384663) is appointed as the 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 of not being ineligible under Section 12(5) of the Act.

11. The Arbitrator shall adjudicate the claims of the petitioner and the counter claims, if any of the respondents.

12. The fee of the Arbitrator shall be as per the fee schedule of the Delhi International Arbitration Centre.

13. The parties are at liberty to approach the learned Arbitrator for

elucidating the necessary disclosures and for further proceedings.

14. The petition is accordingly disposed of.

15. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 28, 2017

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