

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 624/2017

ASATSU-DK FORTUNE COMMUNICATIONS PVT LTD

..... Petitioner

Through : Mr.Siddharth Vaid, Advocate.

versus

DATAWIND INNOVATIONS PVT LTD

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

%

15.11.2017

The parties entered into an agreement dated 22.02.2015 but disputes arose later. The agreement dated 22.02.2015 contains an arbitration clause which read as under:-

"16. Any dispute or claim that arises out of or in connection with the Agreement or its subject matter, breach, termination, validity or formation (including non-contractual disputes or claims), but failing amicable settlement within thirty (30) days shall be settled through arbitration in accordance with this clause. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 by a sole arbitrator selected with consent of agency. The decision of the arbitrator shall be final and binding upon the parties hereto. All arbitration proceedings shall be conducted in the English language and the place of arbitration shall be New Delhi. The award and determination of the arbitrator shall be

binding upon the parties and their respective heirs, representatives, successors, administrators and assigns. The parties agree that they will each be responsible for the costs of their own legal counsel and other costs incurred in preparing each party' case for arbitration. Fees and expenses of the arbitrators and all the administrative costs of the arbitration, such as the cost of the hearing room, if any, shall be borne equally by the parties. Each Party retains the right to apply to any court of competent jurisdiction for provisional and/or conservatory relief, including pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with agreement to arbitrate or a waiver of the right to arbitrate. By submitting the dispute to arbitration under the Rules, the Parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of challenge or appeal insofar as such waiver can validly be made (including but not limited to right to object on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum). Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. Each shall continue to remain bound by the terms and conditions of this Agreement irrespective of the existence or pendency of any dispute. All disputes & differences of any kind whatever arising out of or in connection with this

Agreement shall be subject to the exclusive jurisdiction of courts of New Delhi only."

It is submitted despite legal notice dated 27.07.2017 sent to the respondent for invoking the arbitration clause, the respondent slept over the matter, hence this petition.

The respondents were directed to be served with notice of this petition. The affidavit of service has been filed by the learned counsel for the petitioner wherein the notice has been served at the address of the respondent through courier.

As per arbitration clause (supra), the seat of arbitration is at Delhi.

Since the respondent has not opted to appoint an arbitrator despite request made by the petitioner and since has failed to appear before this court, the petition is allowed. Mr. B.S.Mathur (Retd. District Judge) (Mobile No.987372405) is appointed as an arbitrator. The arbitration shall take place under the aegis of DIAC and the fees of the learned Arbitrator shall also be in terms of the DIAC Rules.

The petition is disposed of.

YOGESH KHANNA, J

NOVEMBER 15, 2017

M