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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 534/2017 & IA 15295/2017
SCIENTIFIC SECURITY MANAGEMENT SERVICES PVT. LTD.

..... Petitioner

Through: Mr.Kanwal Chaudhary, Adv.

versus

FINANCIAL SOFTWARE & SYSTEMS PVT.LTD. & ANR.

..... Respondents

Through: Mr.Abdhesh Chaudhary, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.12.2017

This petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 *inter alia* praying for the following reliefs:-

(a) *Restrain Respondent No.1 company, its officers, servants, agents and employees from invoking / encashing the Bank Guarantees bearing no. B.G. No. 01740BG16011398 in a sum of Rs.1,00,00,000/- and Bank Guarantee., No.01740BG14002805 amounting to Rs.50,00,000/- respectively;*

(b) *Grant ex-parte ad interim injunction restraining the Respondent No.2 Banks, its managers, officers, servants, agents and employees from releasing the amounts against invocation of the Bank Guarantees bearing no.01740BG16011398 in a sum of Rs.1,00,00,000/- and Bank Guarantee No. 01740BG14002805 amounting to Rs.50,00,000/- respectively;*

The parties had entered into 'Masters Services Agreement' dated 20th July, 2011 which contains an arbitration agreement in

clause 20. The same is reproduced hereinbelow:

20. ARBITRATION

20.1 Any dispute, difference or claim, that is not settled within 15 Business Days from the date on which such dispute, difference or claim is raised, arising out of or in connection with this Agreement, including the construction, validity, execution, performance, termination or breach thereof (a 'Dispute'), shall be referred to final and binding arbitration under the [Indian] Arbitration and Conciliation Act, 1996, as amended. Such arbitration shall be held in Chennai. All proceedings of such arbitration shall be in the English language.

20.2 FSS shall appoint one arbitrator. The Service Provider shall appoint one arbitrator. The two arbitrators so appointed shall appoint one more arbitrator so that the total number of arbitrators shall be three. The third arbitrator so appointed by the two arbitrators shall act as the presiding arbitrator. In the event of a Party failing to appoint an arbitrator or the two arbitrators failing to appoint the third arbitrator, as provided, hereinbefore, such arbitrator(s) shall be appointed in accordance with the [Indian] Arbitration and Conciliation Act, 1996, as amended. The award given by the majority of the arbitrators shall be final, conclusive and binding upon the Parties.

20.3 The arbitral award(s) was rendered shall be final and binding and shall not be subject to any form of appeal. All reasonable cut-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by any Party, in connection with any dispute, shall be paid by the other Party, in accordance with the directions of the arbitrator(s).

20.4 Notwithstanding any other provision of this Agreement, any Party shall be entitled to seek injunctive or other provisional relief from any court of competent jurisdiction pending the final decision on award of the arbitrator(s).

Counsel for the respondent no.1 appears on an advance notice and submits that as the seat of arbitration is to be at Chennai in terms of clause 20.1 of the agreement, this Court would lack territorial jurisdiction to entertain the present petition. He further draws my attention to the judgment of the Supreme Court in *Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors.* (2017) 7 SCC 678, wherein the Supreme Court had held that the moment seat is determined, it is akin to an exclusive jurisdiction clause.

Counsel for the petitioner, in light of the above objection, prays for leave to withdraw the present petition with liberty to file afresh before the Court of competent jurisdiction.

The petition is dismissed as withdrawn with liberty as prayed for.

NAVIN CHAWLA, J

DECEMBER 18, 2017
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