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

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Date of Decision: 12.11.2018

+ ARB.P. 27/2017

EASTERN SOFTWARE SYSTEMS PVT. LTD.

..... Petitioner

Through Mr. Chandra Shekhar Yadav, Adv.

versus

JOY OF GIVING GLOBAL FOUNDATION & ANR

.... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. The record shows that service qua the respondents via publication stands completed. This is evident upon perusal of the order dated 8.10.2018 passed by the Joint Registrar (Judicial).

1.1 Despite service, there is no appearance on behalf of the respondents. The respondents are, accordingly, proceeded *ex-parte*.

2. I may only note that respondent no.2 has been arrayed as a party to the present proceedings in his capacity as Director of respondent no.1 company.

2.1 Clearly, there was no necessity to implead respondent no.2 as a party to the present proceedings.

2.2 This aspect is conceded to by the counsel for the petitioner.

3. That being said, it is the petitioner's case that it entered into a

Placement Portal Development Agreement (in short 'agreement') with respondent no.1 company on 22.6.2015.

4. The petitioner avers that the work envisaged under the agreement involved development, creation, testing and delivery of a "Placement Portal" website.

4.1 The petitioner claims that despite the fact that it carried out the mandate of the agreement, the payments against invoices raised were not made by respondent no.1 company.

4.2 According to the petitioner, a total sum of Rs.13,19,050/- is due and payable by respondent no.1 company against invoices bearing nos. 330, dated 31.8.2015; 551, dated 23.12.2015; 81, dated 26.5.2016 and 82, dated 26.5.2016.

4.3 The petitioner further claims that a demand was raised in that behalf vide notice dated 12.7.2016, after it failed to prevail upon respondent no.1 company to make the payment in the usual and normal course.

4.4 I am informed by the counsel for the petitioner that no reply was received by the petitioner qua the said demand notice.

5. The record shows that thereafter, the petitioner served yet another notice dated 28.9.2016 on respondent no. 1 company whereby, apart from reiterating the demand, the petitioner indicated the name of its nominee Arbitrator.

6. I have heard the counsel for the petitioner and perused the record. The agreement placed on record is demonstrative of the fact that an arbitration agreement obtains between the parties herein.

6.1 Reference in this behalf is made by the learned counsel for the petitioner to Clause 10.4 of the agreement.

6.2 The said clause reads as follows:

“10.4 Any disputes or differences that may arise between the parties hereto out of or in connection to or in connection with the interpretation of any of the terms of this Agreement shall be referred to arbitration of a single arbitrator if both parties can agree and failing which, each party shall appoint one Arbitrator and both the arbitrators appointed by the parties mutually appoint a third Arbitrator to form an Arbitral Tribunal to resolve the dispute between the parties. The Arbitration award passed by the Sole Arbitrator or by the Arbitral Tribunal as the case may be, shall be binding upon the parties. The arbitration proceedings shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The arbitration shall be held in New Delhi and the proceedings shall be conducted in English language.”

7. In view of the fact that the respondents have chosen not to enter appearance, there is no rebuttal on record of this Court. Consequently, the existence of the arbitration agreement is not in dispute. The petitioner, as alluded to above, has triggered the arbitration agreement.

7.1 Given the aforesaid circumstances, I am inclined to appoint an Arbitrator.

8. At this stage, counsel for the petitioner submits that since the claim amount is not large the Court may appoint a sole arbitrator.

9. Accordingly, the petition is allowed as prayed. Mr. D.K. Saini, former Additional District Judge (Cell no.:9312627187) is appointed as an Arbitrator.

9.1 The learned Arbitrator will be paid his fees in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996 (in short

“1996 Act”).

9.2 The learned Arbitrator before entering upon reference will make a declaration in accordance with Section 12 of the 1996 Act and also issue notice to the respondents herein.

10. The petition is disposed of in the aforesaid terms.

11. The Registry will dispatch a copy of this order to the learned Arbitrator.

12. *Dasti.*

RAJIV SHAKDHER, J

NOVEMBER 12, 2018

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