

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 25/2018, IA No.619/2018

MR. DEVENDER GANDHI

..... Petitioner

Through : Mr.S.K.Nanda,
Advocates.

Mr.Bharat,

versus

M/ S SITI NETWORKS LTD. & ORS.

..... Respondents

Through : Mr.Joy Basu, Senior Advocate with
Ms.Ritwika Nanda, Mr.Pratyush,
Mr.Abhinav, Advocates for
respondent no.1.

Ms.Aditi Tambi, Advocate for
respondent no.3.

Mr.Sanjay Garg, Mr.Amit Rao,
Advocates for respondent no.4.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

%

05.02.2018

This petition is under Section 11 of the Arbitration and Conciliation Act, 1996. The parties have entered into partnership deed on 01.03.2014 and also a Memorandum of Understanding (MoU) dated 23.04.2004 containing an arbitration clause as under:

“10. All disputes or differences whatsoever which shall at any time hereinafter (whether during the continuance and in force of this MoU or other subsequent agreement in this regard or upon or after discharges or determination) arise between the parties hereto or their respective successors in title and assigns touching or concerning this

MoU or other subsequent agreements or its interpretation or effect or as to the rights, duties, responsibilities and liabilities of the parties or either of them under or by virtue of this MoU or other subsequent agreement or otherwise as to any other matter in any way connected with, arising out of or in relation to the subject matter of this MoU or other subsequent agreements shall at first be subjected to an attempt at resolution by mutual amicable discussion if need be by escalating the same to the level of promoters: failing which the same shall be referred for Arbitration by appointing a Sole Arbitrator to be appointed by the First party under the provisions of the Arbitration. and Conciliation. Act, 1996, read with rules. made there under. The place of arbitration shall be New Delhi and the language of arbitration would be English.”

The learned counsel for the respondent no.1 submit as per the procedure prescribed in the arbitration clause, the arbitrator is to be appointed by respondent no.1 in case of any dispute arose per terms of the agreement. A notice dated 02.09.2017 was given for invocation of arbitration by respondent no.1 which receipt is though disputed. On 19.09.2017 the respondent no.1 received a request from respondent no.3 to discuss the dispute and set out a plan to resolve it but the respondent no.1 did not accept the proposal and on 25.09.2017 clear its stand that the talks for the settlement has already taken place. Thereafter respondent no.1 appointed Ms.Justice Rekha Sharma (Retd.) as an arbitrator in the present case per procedure established by arbitration clause. It is pertinent to mention the arbitrator held

sessions and on 29.11.2017 the counsels for the parties appeared before the learned arbitrator and following order was passed:

“Respondents have entered appearance through their counsels who have filed vakalatnama on record. On the request of learned counsel for the claimant, time is allowed to file statement of claim. Let the same be filed on or before 9th January, 2018 with advance copy to counsel for the respondent. It is submitted by learned counsels for the respondent that after they are served with the copy of claim, they would be filing an application under Section 16 of the Arbitration and Conciliation Act, 1996.

List on 9th January, 2018 at 4:00 p.m. for further directions.”

All the parties thus sought time to file an application under Section 16 of the Arbitration and Conciliation Act, which application was sought to be decided by the learned arbitrator but despite appearance on 04.01.2018 before the learned arbitrator the petitioner moved this application.

Considering the above submissions where the parties have appeared and submitted to the jurisdiction of the learned arbitrator and sought time to file application under Section 16 of the Act, who shall decide upon its jurisdiction. Nothing else is required to be done by this Court.

The petition stands dismissed being devoid of merits.

YOGESH KHANNA, J

FEBRUARY 05, 2018/ᄁᄁ