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

+ **ARB.P. 144/2018**

**INDIAN VISION NETWORK (FORMELY KNOWN
AS CLEAR VISION NETWORK) Petitioner**
Through: Mr Sangram S. Saron, Advocate.

versus

**NOIDA SOFTWARE TECHNOLOGY PARK
LIMITED Respondent**
Through: Mr Asif Ahmad, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER
% 18.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a sole arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the 'Distribution Partner Agreement' dated 07.04.2014 (hereafter 'the Agreement'). The Agreement includes a Dispute Resolution Clause, which is set out below:-

“GOVERNING LAW AND DISPUTE RESOLUTION

(i) This Agreement shall be governed by and construed in accordance with Indian Law. Subject to clause 16 (ii) below, courts in Delhi, India shall have exclusive jurisdiction in relation to any dispute which arises in connection with or in relation to this agreement.

(ii) If any dispute (s) /difference (s)/disagreement(s)/ claim (s) arise under this agreement (not legible) otherwise by amicably resolved between the parties such dispute (s) /difference (s)/disagreement(s)/ claim (s) shall be submitted to

sole arbitration under the arbitration and conciliation Act 1996 and conclusively resolved by a single arbitrator to be appointed by mutually by both the parties. Both parties shall share equally the costs fees and other expenses of the single arbitrator appointed mutually. Arbitration shall proceed in accordance with the arbitration and conciliation act 1996 or any statutory amendment or re-enactment thereof.

(iii) The venue for arbitration shall be New Delhi and the arbitration shall be conducted in the English language.

(iv) The decision of the arbitrator shall be in writing and shall be final and binding upon the parties. Each party shall bear its own lawyers' fees and charges subject always to the final award of the arbitrator and/or making a valid final award.

(v) Each of the parties hereby acknowledged and agrees that its failure to participate in arbitration proceedings in an respect or to comply with any request order or direction of the arbitrator shall not preclude the arbitrator proceedings with such arbitration by making a final award.

(vi) Notwithstanding anything contained herein, the parties shall be entitled to apply to the appropriate court in New Delhi for interlocutory relief in respect of or pending the arbitration, in respect of any matters arising out of or in connection with this Agreement.”

2. In view of the disputes that have arisen between the parties, the petitioner had invoked the arbitration clause by a letter dated 27.04.2017. The petitioner had also sent a letter dated 07.11.2017 suggesting names of three persons one of whom could be appointed as an arbitrator. However, it is stated that the petitioner has not received any response to the said letter.

3. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause although he states that the disputes may not be arbitrable.

4. Since, the existence of the arbitration agreement is not in dispute and it is apparent that the parties have been unable to concur on appointment of an arbitrator. It is necessary that an arbitrator be appointed. Accordingly, Sh Sunder Lal Bhayana, Retd. Judge, Delhi High Court (Mobile No. 9871300028) is appointed as a sole arbitrator to adjudicate the disputes between the parties falling within the scope of the arbitration clause as set out above. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix the fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act. The parties are at liberty to approach the Arbitral Tribunal for further proceedings.

5. The petition is disposed of.

VIBHU BAKHRU, J

MAY 18, 2018

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