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

+ ARB.P. 334/2018

BERGGRUEN CAR RENTALS PVT. LTD. Petitioner
Through: Mr.Rakesh Kumar and Mr.Achin
Goel, Advs.

versus

DNATA INTERNATIONAL PVT. LTD. Respondent
Through: Mr.Sandeep Bisht, Adv. along with
Ms.Srishti Gupta, AR

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **14.08.2018**

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the Service Agreement dated 23.10.2011. The said Agreement between the parties contains an Arbitration Agreement in form of Clause 1.11 thereof.

The parties have also entered into a Service Agreement dated 15.10.2013, wherein admittedly there is no Arbitration Agreement between the parties and the disputes resolution mechanism is provided in Clause 7 thereof in the following words:

"7. DISPUTES RESOLUTION

7.1 Any and all the differences or disputes arising out of or in connection with this Agreement or the execution, interpretation, validity, performance, breach or termination

hereof (including, without limitation, the provisions of this clause (singularly referred to as 'Dispute' and collectively referred to as 'Disputes') shall be endeavoured to be settled by and between the Parties by amicable and mutual negotiations and discussions within 30 (thirty) days from the date when dispute(s) have arisen.”

The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its letter dated 09.11.2017 which was responded by the respondent vide its reply dated 17.11.2017 refusing to give its consent for appointment of an Arbitrator.

Learned counsel for the respondent submits that as there is no Arbitration Agreement between the parties in relation to the Agreement dated 15.10.2013, the same cannot be referred to Arbitration. He submits that the two Agreements, that is one dated 23.10.2011 and other dated 15.10.2013, are separate and distinct and the Arbitration Agreement in the Agreement dated 23.10.2011 cannot be used for seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 15.10.2013.

On the other hand, learned counsel for the petitioner submits that both these Agreements are supplementary in nature and not in substitution of one and the other. He submits that the Arbitration Agreement contained in the Agreement dated 23.10.2011 shall also apply to any disputes that have arisen between the parties in relation to the Agreement dated 15.10.2013.

In my view, as there exists an Arbitration Agreement between the parties in the Agreement dated 23.10.2011, appointment of a Sole Arbitrator cannot be refused to the petitioner at this stage. It would be for the Arbitrator to decide as to whether the two Agreements are supplementary to

each other or operate separately. Incase the Arbitrator comes to the conclusion that the two Agreements are separate, the claim raised by the petitioner insofar as it relates to Agreement dated 15.10.2013, would not be maintainable before the Arbitral Tribunal. However, the said question cannot be determined at this stage especially in light of Section 11(6A) of the Act.

In view of the above and with the consent of the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC), which shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 23.10.2011. The Arbitration and the fee shall be governed by the DIAC Rules.

Parties shall appear before the DIAC on 10th September, 2018 at 2.00 p.m.

The petition is disposed of in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 14, 2018/Arya