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

+ **ARB.P. 348/2018**

**MINTELLECTUALS LLP**

..... Petitioner

Through Mr Hrishikesh Baruah, Mr Pranav Jain,  
Advocates.

versus

**JAINA MOBILE INDIA PVT. LTD. & ANR.** ..... Respondents

Through Mr Dheeraj Singh, Advocate.

**CORAM:**

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

**ORDER**

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**08.05.2018**

**IA No. 6327/2018**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**ARB.P. 348/2018 & IA No. 6326/2018**

3. The petitioner has filed the present petition under Section 11(4) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“Allow the instant Petition and thereby to make the appointment of one Hon'ble Arbitrator, on behalf of the Respondents, as part of the 3 member Ld. Arbitral tribunal to be constituted in terms of Clause IX of the Research and Collaboration Agreement dated 01.07.2017, where Hon'ble Mr. Justice [Retd.] S. S. Nijjar (Former Judge Supreme Court of India) has already been appointed/nominated by the Petitioner, for adjudication of

the disputes referred to in the invocation notice dated 21.03.2018; and

Pass appropriate directions for constitution of the Learned Arbitral Tribunal, to adjudicate the differences between the Respondents & Petitioner in terms of Clause IX of the Research and Collaboration Agreement dated 01.07.2017;”

4. The petitioner seeks constitution of an arbitral tribunal in terms of Clause IX of the Research and Collaboration Agreement dated 01.07.2017 entered into with the respondent (the Agreement). The said Clause IX which reads as under:-

**“IX. Applicable Law and Dispute Resolution**

This Agreement shall be governed by and construed in accordance with the substantive laws of India.

All disputes, differences etc. arising under this Agreement between the parties shall be finally settled under the Arbitration & Conciliation Act 1996 and rules defined thereunder from time to time, by an Arbitral Tribunal consisting of Three Arbitrators appointed in accordance with the said Rules. The award shall be final and binding and enforceable in any court of competent jurisdiction. The arbitration shall be held in Delhi, India, in the English language. The parties undertake and agree that all arbitral proceedings conducted with reference to this Article shall be kept strictly confidential and all information disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings.

The parties also agree that any issue relating to validity or essentiality or infringement of patent is outside the scope of the present Agreement and hence outside the scope of this Arbitral Clause. With respect to matters of infringement and

essentiality and validity of Patents, the substantive law of the country or state under which the respective Patent has been granted shall apply.

During the pendency of any arbitration the parties shall continue to perform their respective obligations including but not limited to payment under Clause III.

Reference to arbitration in clause IX does not prejudice a Party's right to proceed to court for interim measures or for the collection of payments at the competent court having jurisdiction over such matters."

5. The learned counsel appearing for the respondent states that the parties are endeavouring to settle their disputes amicably and are engaged in negotiations.
6. Since, there is no dispute as to the existence of an arbitration clause, an arbitral tribunal is required to be constituted for adjudication of the disputes between the parties. Since the respondent has failed to nominate an arbitrator, an arbitrator is required to be appointed on behalf of Respondent No.1 (Respondents).
7. Justice D.K. Jain (retd.) (Mobile No. 9999922288), a former judge of the Supreme Court, is appointed as an arbitrator on behalf of the respondents. Both the arbitrators shall concur on appointment of a third Arbitrator. 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 arbitral fees in consultation with the learned counsel for the parties.
8. The parties are at liberty to approach the arbitrator for further

proceedings.

9. It is clarified that all contentions of the parties are reserved, including whether the Arbitral Tribunal would have the jurisdiction to decide any disputes between the petitioner and Respondent No.1.

10. The petition and pending application are, accordingly, disposed of.

**VIBHU BAKHRU, J**

**MAY 08, 2018**

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