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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 1524 OF 2019
AND
COMM ARBITRATION APPLICATION (L) NO. 545 OF 2019**

B2X Services Solutions India Pvt Ltd ...Petitioner
Versus
Triotech Business Solutions LLP, formerly known ...Respondent
as Troika

Mr Sarosh Bharucha, *with Shrey Fatterpekar & DS Patil, i/b DS Patil for the Petitioner in Petition & for the Respondent in Application.*

Mr Abhishek A Walwaikar, *with Mohammed H Najmi & Maria M Najmi, i/b MH Najmi, for the Respondent in Petition and for the Applicant in the Application.*

CORAM: G.S. PATEL, J.
DATED: 20th December 2019

PC:-

1. The Respondents have themselves invoked arbitration under MoU dated 29th December 2017 in relation to the service centre at Hyderabad. Mr Bharucha waives formal invocation of arbitration.
2. The arbitration clause in question is clause 11.5. It reads thus:

“11.5 Governing Law and Arbitration

Governing Law: Any disputes arising out of or in connection with the validity, interpretation or implementation of this Term Sheet and the Definitive Agreements shall be governed by the laws of India and subject to the provisions related to arbitration (below), the Courts at Mumbai shall have exclusive jurisdiction in relation to any interim relief sought by any Party or for enforcement of any award granted by the arbitration panel as provided below.

Arbitration: In the event of there being any dispute or difference between the parties hereto as to any clause or provision of this Term Sheet or as to the interpretation hereof or as to the rights, liabilities, acts, omissions or any Party hereto arising under or by virtue of this Term Sheet or otherwise in any way relating to this Term Sheet, such disputes shall be referred to an arbitration panel. The arbitration panel shall consist of three (3) arbitrators, one (1) appointed by each Party, and the two (2) arbitrators so appointed jointly choosing the third arbitrator who shall be the chairman of the arbitration panel.

The venue of Arbitration shall be at Mumbai, India.

The arbitration proceedings shall be conducted in the English language.

The Arbitration proceedings shall be conducted in accordance with the latest arbitration Act/rules of India in force.

The arbitral award made and granted by the arbitration panel shall be final, binding in accordance with applicable law.

The cost of arbitration, and specifically the fees and expenses of the arbitrators, shall be shared equally by the Parties unless the award otherwise provides.”

3. The parties leave the choice of nomination of arbitrator to the Court. As currently advised, neither side is able to accurately quantify the claim in question.

4. There are two service centres, one at Surat and one at Hyderabad. There is a separate Memorandum of Understanding dated 29th December 2019 in regard to the other service centre at Surat. Obviously this cannot be and will not be a composite arbitration. There will be two references.

5. In exercise of my powers under Section 11(6) of the Arbitration and Conciliation Act 1996, I nominate Ms Neeta Jain, learned Advocate of this Court, to act as a learned Sole Arbitrator to decide the differences between the parties arising from the MoU dated 29th December 2017 regarding the Hyderabad service centre.

(a) Appointment of Arbitrator: By consent, Ms Neeta Jain, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties arising from the MoU dated 29th December 2017 regarding the Hyderabad service centre.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates

for the Applicant within one week from today of the order being uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Ms Neeta Jain, Advocate.

Address C/o Gaurav Joshi,
Senior Advocate,
3rd floor, Fort Chambers, 'B'
Wing, Hamam Street, Fort,
Mumbai 400 001

Mobile 93200 03692

Email neetanaik.jain@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward her statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at

such place as she nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:**
Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
 - (ii) Liberty to both sides parties to make an further or other interim application or interim applications including (but not limited to) interim applications under Section

17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

- (iii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (iv) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

6. The Arbitration Petition and the Arbitration Application are both disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)