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

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Date of Judgment: 05.09.2019

+ ARB.P. 533/2019

M/S HCL INFOSYSTEMS LTD

..... Petitioner

Through Mr. Arvind Nigam, Sr. Advocate with
Ms. Binsy Susan, Ms. Neha Sharma,
Mr. Amogh Srivastava and
Mr. Akshay Sharma, Advocates.

versus

UNIQUE IDENTIFICATION AUTHORITY OF INDIA

..... Respondent

Through Mr. Zoheb Hossain, Ms. Rimali Batra,
Mr. Vivek Gurnani and Mr. Mahip
Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. The present petition has been filed under Section 11(4) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking an appointment of a sole Arbitrator for adjudication of the disputes between the parties.
2. The petitioner is a company incorporated under the Companies Act and the respondent is a Statutory Authority established under the Aadhar Act, 2016 established by the Government of India, Ministry of Electronics and Information Technology.
3. The petitioner entered into a contract dated 07.08.2012 with the

respondent whereby the petitioner was appointed as Service Provider for the Central Identities Data Repository. The contract term was for a period of 7 years i.e. upto 06.08.2019.

4. On 09.01.2019, the respondent extended the term of the contract for a period of 9 months and this unilateral extension was disputed by the petitioner on 23.01.2019. Several letters were exchanged between the parties on the interpretation of the provisions of the contract. As per the case of the petitioner, efforts were made to amicably resolve the disputes. The efforts for amicable resolution having failed, the petitioner invoked the Arbitration Clause by a letter dated 09.07.2019, as there was an arbitration agreement between the parties. Clause 24 of the GCC reads as under:

“24:6 All disputes and/or differences remaining unresolved after endeavors under Clause 24.1 failed shall be referred to a Tribunal of three (3) Arbitrators, constituted as per the terms of and under the (Indian) Arbitration and Conciliation Act, 1996. Each party to the contract shall appoint/nominate one Arbitrator each, the two Arbitrators so appointed/nominated by the Parties herein shall together choose the third Arbitrator, who will be the Presiding Arbitrator of the Tribunal. The consortium of the three Arbitrators shall for the Arbitral Tribunal.

24.7 In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of India or any person or institution designate by him (in case of International Commercial Arbitration) shall appoint the Arbitrator/Presiding Arbitrator. In case of domestic contracts, the Chief Justice of the Delhi High

Court of any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon such request of one of the parties.”

5. The petitioner appointed Hon’ble Mr. Justice Vikramajit Sen, former Judge of the Supreme Court as its nominee Arbitrator. The respondent refused to appoint an Arbitrator on the ground that in terms of the arbitration clause, the petitioner had not entered into good faith negotiations prior to invoking arbitration. Since the respondent failed to appoint its Nominee Arbitrator, the present petition has been filed by the petitioner seeking appointment of Nominee Arbitrator on behalf of the respondent.
6. Parties had argued at considerable length on the merits of the case. However, during the course of hearing, settlement has been arrived at. Parties have consented for appointment of the Arbitral Tribunal in terms of the arbitration clause referred to above.
7. The petitioner has nominated Hon’ble Mr. Justice Vikramajit Sen as its nominee Arbitrator. The respondent has nominated Hon’ble Mr. Justice D.K. Jain as its nominee Arbitrator. The parties have further agreed that the two Arbitrators so appointed/nominated by the parties would choose the third Arbitrator, who will be the presiding Arbitrator of the Tribunal.
8. Pursuant to the settlement and with the consent of the parties, I hereby nominate Hon’ble Mr. Justice D.K. Jain, former Judge of the Supreme Court as the nominee Arbitrator on behalf of the respondent. The petitioner has nominated Hon’ble Mr. Justice Vikramajit Sen, former Judge of the Supreme Court as their Arbitrator.

9. The addresses of both the Arbitrators is as under:
- (i) Hon'ble Mr. Justice D.K. Jain (Retd.),
Address: C-3/5, Ground Floor, Safdarjung Development Area,
New Delhi-110016 (Mobile No. 9999922288).
 - (ii) Hon'ble Mr. Justice Vikramajit Sen (Retd.)
Address: D-17, 1st Floor, Kalandi Colony, New Delhi-110065
(Mobile No. 9818000290, 8447333366).
10. The two Arbitrators shall give disclosure in terms of Section 12 of the Act before entering on reference.
11. The two Arbitrators shall thereafter proceed to appoint the Presiding Arbitrator, preferably within a period of four weeks from today. The fee of the Arbitrators shall be fixed as per the Fourth Schedule to the Act or as mutually agreed upon between the parties.
12. The petition is disposed of in the above terms.

JYOTI SINGH, J

SEPTEMBER 05, 2019

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