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

+ **ARB.P. 758/2017**

DEN NETWORK LIMITED

..... Petitioner

Through: Ms. Priya Puri, Advocate with Ms.
Yati Sharma, Advocate.

versus

GALAXY DEN MEDIA AND ENTERTAINMENT PRIVATE LIMITED
& ORS.

..... Respondents

Through: Mr. Siddharth Iyer, Advocate with
Ms. Preetika Dwivedi, Advocate for
Respondent Nos. 2 & 3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.08.2019**

1. The present petition under Section 11 of the Arbitration and Conciliation Act 1996 seeks appointment of the Arbitrator in terms of Clause 29 of the Share Subscription, Share Purchase and Share Holders Agreement.

2. The Arbitration Clause reads as under:-

“29.1 Any dispute between the Parties Inter se, arising out of or in relation to this Agreement shall be resolved by the Parties mutually within fifteen (15) days' of one Party giving to the others, notice of the said dispute, failing which the said dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and any amendments thereto.

29.2 Arbitration shall be conducted in Delhi in the following manner:

- a. All proceedings in any such arbitration shall be conducted in English.
- b. One arbitrator shall be nominated by each Party, and such nominee arbitrators shall appoint a presiding arbitrator.
- c. The arbitration award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.”

3. Respondent No. 1 has not filed any reply to the present petition. However, a counter affidavit has been filed on behalf of Respondent Nos. 2 and 3.

4. At the outset, Mr. Iyer, learned counsel for the Respondent Nos. 2 and 3 submits that there is no surviving dispute between the parties. Further, without prejudice to the foregoing submission, he submits that the arbitration agreement is not in dispute and the invocation of the arbitration clause is also a matter of record. He also draws attention of this Court to the Arbitration Clause which inter-alia provides that “*Any dispute between the **Parties** Inter se, arising out of or in relation to this Agreement shall be resolved by the **Parties** mutually within fifteen (15) days' of one Party giving to the others, notice of the said dispute, failing which the said dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and any amendments thereto*” and also clause 29.2 (b) which provides that *One arbitrator shall be nominated by each Party, and such nominee arbitrators shall appoint a presiding arbitrator.*

5. He also refers to the recital clause that defines the expression 'parties' as under:-

“The expression of the terms "Existing Shareholder A", "Existing Shareholder B" and "Existing Shareholder C" shall hereinafter collectively be referred to as "Existing Shareholders"; and the expression of the terms "Existing Company", "Existing shareholders" and "DEN" shall hereinafter individually and collectively be referred to as "**Party**" and "**Parties**", respectively.

A) DEN is engaged. Inter alia, in the business of providing cable television and internet services across India.

B) The Existing Shareholder A and the Existing Shareholder B. are the promoters of the Existing Company.

C) The Existing Shareholders hold 100% equity shares in the paid up share capital of the Existing Company.

D) . DEN proposes to acquire 51% equity shares in the paid-up share capital of the Existing Company, and the Existing Company

and the Existing Shareholders have agreed to sell 51% equity shares in the paid-up share capital of the Existing Company to DEN.”

6. He submits that on a conjoint reading of the recital clause and the arbitration clause, it transpires that “**existing company**”, “**existing shareholder**” and “**Den**”, have the right to nominate an Arbitrator and in terms of Clause 29.2 (b), the arbitrators so nominated by them have to appoint a presiding arbitrator. In such a situation, the Arbitral Tribunal will consist of four members which is contrary to Section 10(1) of the Act.

7. In view of the above, the court would have to resort to Section 10 (2) of the Act which provides for appointment of a sole Arbitrator. Learned counsels for the Petitioner and Respondent No.2 & 3 do not have any

objection incase the parties are referred to an Arbitral Tribunal consisting of a Sole Arbitrator.

8. Accordingly, having regard to the facts and circumstances of the case, the petition is allowed and **Hon'ble Mr. Justice Anil Dev Singh (Retired Chief Justice, Rajasthan High Court) (Mob.: 9810060203)** is appointed as an Arbitrator to adjudicate the disputes and differences between the parties to the present petition.

9. The parties are directed to appear before the Arbitrator as and when notified. Learned Arbitrator will issue a declaration under Section 12 read with the attendant provisions of the 1996 Act before entering upon reference.

10. The learned Arbitrator will be paid his fee in terms of the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996.

11. The Petition is allowed in the above terms. No order as to costs. The Registry will despatch a copy of this order to the learned Arbitrator.

SANJEEV NARULA, J

AUGUST 06, 2019

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