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

+ ARB.P. 387/2019

M/S CYBER SECURITY INTEGRATORS
(INDIA) PVT. LTD. (CSIIPL) Petitioner
Through: Mr.Devansh Gandhi, Advocate

versus

THE ASSOCIATED CHAMBERS OF COMMERCE
AND INDUSTRY OF INDIA (ASSOCHAM) Respondent
Through: Mr.Suman Jyoti Khaitan, Ms.Rita Dey and
Mr.Nubair Alvi, Advocates and Mr.Kuntal
Kar, A.R.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
13.01.2020

1. The petitioner is seeking appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act.
2. The arbitration agreement between the parties is contained in Clause No.6 of the MOU dated 2nd June, 2016 and the petitioner invoked the arbitration vide notice dated 14th February, 2019.
3. Learned counsel for the respondent urged at the time of hearing that there is no valid arbitration agreement between the parties. Without prejudice, it is submitted that the petitioner has played a fraud upon the respondent and, therefore, this matter should not be referred to arbitration. Reliance is placed on *Bihar State Mineral Development Corporation v.*

Encon Builders (I) (P) Ltd., (2003) 7 SCC 418 and ***Jagdish Chander v. Ramesh Chander***, (2007) 5 SCC 719.

4. Clause 6 of the MOU dated 2nd June, 2016 is reproduced herein:-

“6.0 Dispute Redressal:

This MOU entered between the above two Parties is governed by the laws of India for the time being in force. Any dispute arising between the two parties shall be settled by mutual discussions; failing which it shall be subject to Arbitration under Indian Arbitration Act. In case the dispute still remains unresolved, the same shall be subject to the exclusive jurisdiction of Courts at Delhi.”

5. This Court is of the view that there is a valid arbitration agreement between the parties. The intention of the parties is clear beyond doubt that the parties agreed to resolve their disputes through arbitration.

6. ***Bihar State Mineral Development Corporation’s*** case (supra) and ***Jagdish Chander’s*** case (supra) do not support the case of the respondent. In ***Bihar State Mineral Development Corporation’s*** case (supra), the purported arbitration clause is reproduced in para 4 of the judgment according to which the disputes were to be referred to the Managing Director of the appellants therein whose decision had to be final. However, the clause did not mention the reference to the Managing Director as an Arbitrator. The Supreme Court held that the parties never intended to refer the disputes to the Managing Director as an Arbitrator. In ***Jagdish Chander’s*** case (supra), the relevant clause between the parties is reproduced in para 2 of the judgment according to which the parties had to mutually decide the disputes or refer it to the arbitration, if the parties so determine, meaning thereby that there was no concluded arbitration

agreement and the parties had the option to agree for reference of arbitration after the disputes have arisen. In both the aforesaid judgments, there was no valid arbitration agreement between the parties whereas in the present case, there is a clear intention of the parties to refer the disputes to arbitration. With respect to the respondent's allegations of fraud, the same has to be considered by the learned Arbitrator.

7. The petition is allowed and Mr. Justice Mukul Mudgal, former Chief Justice of Punjab and Haryana High Court (Mobile No.9818000250) is appointed as the sole arbitrator to adjudicate the disputes between the parties.

8. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC).

9. The learned arbitrator shall ensure the compliance of Section 12 read with Fifth, Sixth and Seventh Schedule of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

10. The fee of the learned arbitrator shall be in accordance with the Schedule of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.

11. Copy of this order be sent to Delhi International Arbitration Centre (DIAC).

12. Copy of this order be sent to the learned arbitrator.

13. Copy of this order be given *dasti* to counsels for the parties under the signature of the Court Master.

J.R. MIDHA, J.

JANUARY 13, 2020

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