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

+ **ARB.P. 300/2021**

PINE LABS PRIVATE LIMITED Petitioner
Through **Ms. Gurmeet Bindra, Adv.**

versus

**ICP DIGITAL TECHNOLOGY
PRIVATE LIMITED** Respondent
Through **None**

**CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR**

ORDER (ORAL)
% **29.07.2021**
(Video-Conferencing)

C .HARI SHANKAR, J.

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1. Despite notice having been issued in this matter, there is no response from the respondent either today or on the last date of hearing. There has been no appearance on behalf of the respondent on either of the dates.

2. As such, the Court has heard Ms. Bindra, learned counsel for the petitioner and proceeds to dispose of the matter.

3. This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act" in short), seeks appointment of an

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arbitrator to arbitrate on the disputes between the parties.

4. The substratum of the dispute is set out in paras B to I of the petition, which are, for ready reference, reproduced thus:

“B. That Petitioner is engaged in the business of providing software and information technology solutions which includes information technology and software solutions for loyalty programs, gift card and pre-paid, petro automation, point of sales and credit card and cash payment network of terminals at PCQs and retailers and other ancillary services in the business of offering services in retail automation, retail payment solution and transaction processing in India.

C. That the Respondent approached Petitioner for deployment of the devices supplied by Petitioner and availing its services in order to offer EMI schemes in relation to the goods sold at various merchant outlets to cardholders. Accordingly, from time to time Agreements were executed between the Respondent and Petitioner. Certified copy of the Agreements dated 01.05.2017, 01.06.2017, 10.07.2017 and 18.06.2018 are annexed herewith as document **P-2** (Colly).

D. That under the above Agreements, for the devices deployed and services rendered to the Respondent, Petitioner raised following invoices to the tune of Rs.6,65,635/- (Rupees Six Lakhs Sixty Five Thousand Six Hundred and Thirty Five) which were duly received by the Respondent-

No.	Document No.	Invoice Amount	Posting Date	Due Date
01	INV091712009551	1,88,224.00	31.12.2017	15.01.2018
02	INV091811030458	64,900.00	30.11.2018	15.12.2018
03	INV091812004016	1,55,377.00	11.12.2018	26.12.2018
04	INV091812022469	64,900.00	31.12.2018	15.01.2019
05	INV091901048442	64,900.00	31.01.2019	15.02.2019
06	INV091901096796	17,594.00	31.01.2019	20.02.2019

07	INV091901096803	10,620.00	31.01.2019	20.02.2019
08	INV091901096806	21,240.00	31.01.2019	20.02.2019
09	INV091902052904	12,980.00	28.02.2019	20.02.2019
10	INV091902052905	64,900.00	28.02.2019	20.02.2019

Copy of the Invoices are annexed herewith as document P-3 (Colly).

E. It is further submitted that despite receipt of the said invoices, the Respondent paid only a sum of Rs.27,869/- (Rupees Twenty Seven Thousand Eight Hundred Sixty Nine Only) as against total outstanding amount of Rs.6,65,635/- (Rupees Six Lakhs Sixty Five Thousand Six Hundred and Thirty Five Only), thus a sum of Rs.6,37,766/- (Rupees Six Lakhs Thirty Seven Thousand Seven Hundred and Sixty Six) is due and payable by the Respondent. It is pertinent to state that in terms of the Agreement(s) between the parties, the Respondent is not only liable to pay the said invoice amount but also interest @ 1.5% p.m. for the delayed period i.e. from the due date until paid.

F. It is stated that since the Petitioner had diligently performed its part of obligations under the said Agreements and had made the delivery of the work to the satisfaction of the Respondent, therefore apparently there is no reason as to why Petitioner should not be paid its outstanding dues. Thus, prima facie non-payment of the above invoices is illegal and unwarranted.

G. That the Petitioner on numerous occasions vide various written communications, requested the Petitioner to release the payment due to Petitioner under the aforesaid Agreements and various purchase orders issued by the Respondent. It is stated that despite vide E-mail dated 10.10.2018, the Respondent acknowledged the aforesaid dues and assured to pay the same on or before 26.11.2018, it failed to do so. Further, vide E-mails dated 27.11.2018 and 21.02.2019 the Respondent once again assured the Petitioner that the said outstanding amount will be duly paid. However, despite said assurances the Respondent failed to pay the same. Emails dated 10.10.2018, 27.11.2018 and 21.02.2019 are annexed herewith as document **P-4 (Colly)**.

H. It is stated that Petitioner tried its best to resolve the aforesaid dispute, by calling upon the Respondent in writing vide e-mails and also requested the Respondent orally to resolve the same. That since; the Respondent failed to pay the total outstanding amount of Rs.6,37,766/- (Rupees Six Lakhs Thirty Seven Thousand Seven Hundred and Sixty Six Only) despite its assurance, the Petitioner sent a Legal Notice via Speed Post, Courier and E-mail dated 13.11.2019 calling upon the Respondent to pay the total outstanding amount of Rs.6,37,766/- (Rupees Six Lakhs Thirty Seven Thousand Seven Hundred and Sixty Six). The Petitioner further requested the Respondent to give its consent for the appointment of 'Mr. Atul Batra' as the sole Arbitrator to adjudicate the aforesaid dispute regarding recovery of the aforesaid amount. Office copy of the Legal Notice dated 13.11.2019 alongwith dispatch and service proof is annexed herewith as document P-5.

I. That despite receipt of the said Legal Notice by the Respondent, the Respondent neither paid the amount nor made any effort to settle the aforesaid dispute.”

5. Needless to say, the aforesaid reproduction of the paragraphs from the petition would not amount to acknowledgement by this Court of the legitimacy of the petitioner’s claim and the respondent shall be at liberty to contest the claim before the learned arbitrator.

6. Agreement between the parties contains the following clause for resolution of disputes:

“10. DISPUTE RESOLUTION

10.1 Both the Parties shall resolve all disputes arising in connection with this Agreement amicably by mutual negotiation. In case no settlement is reached within thirty (30) days of one Party's receipt of a written notice of dispute from the other Party, all disputes arising in connection with this Agreement shall then be settled by a sole arbitrator mutually agreed by the

Parties within 30 days after receipt of written request for reference to arbitration by one of the Parties, in accordance with the Arbitration and Conciliation Act, 1996, with its statutory modifications, enactments or reenactments thereto.

10.2 If the Parties cannot agree on a sole arbitrator within the aforesaid 30 day period, each Party shall nominate an arbitrator and the two selected arbitrators shall agree on a third arbitrator.

10.3 The place of arbitration shall be New Delhi and the language to be used in the proceeding shall be English. The Parties agree that the arbitration award shall be binding on them and that the arbitral award shall be the sole and exclusive remedy regarding any claims, counterclaims or issues presented to the arbitrators."

7. Notice invoking arbitration was sent by the petitioner to the respondent on 13th November, 2019. There is no response from the respondent till date.

8. In view of the aforesaid, the Court disposes of the present petition by appointing Ms. Esha Mazumdar, Advocate (Cell: 9873968037) as arbitrator to arbitrate on the disputes between the parties.

9. The learned arbitrator is entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

10. The learned arbitrator would file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

11. The petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

JULY 29, 2021

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