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

% ***Date of decision: 05.01.2022***

+ ARB.P. 823/2021

MR. RAJESH KUMAR JAIN Petitioner
Through: Mr. Umesh Sinha & Ms. Sudha
Sinha, Advocates

Versus

M/S. TATA TELESERVICES LTD. Respondent
Through: Mr. Mansoor Ali Shoket &
Mr. Kunal Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator on terms mentioned in Clause-28 of the Business Partnership Agreement dated 18.04.2016 executed with respondents.

2. Petitioner claims to be proprietor of M/s Edge Technologies, is in the field of marketing of services and associated with the respondent- Tata Teleservices Ltd. for marketing its services & products on commission basis since the year 2009. Based upon business, an agreement dated 20.09.2012 was entered between petitioner and Tata Teleservices Ltd. which was ARB.P. 823/2021



further renewed on 18.04.2016. However, certain disputes arose between the parties with regard to some incentive programme in the year 2014-2015 and in respect thereof, petitioner had preferred a commercial suit bearing No. 39/2021. Thereafter, certain disputes with regard to payment of commission for the period between June 2018 till July 2020 also arose and despite various e-mail and communications, the same could not be resolved. So, petitioner had issued legal notice dated 11.09.2020 to the respondent for payment of due invoices, which was replied by the respondent vide reply dated 24.09.2020, however matter again could not be resolved. Thereafter, legal notice dated 07.10.2020 was sent by the petitioner to the respondent invoking arbitration in terms of Clause-28 of the Business Partnership Agreement dated 18.04.2016, however it was not replied to, hence, the present petition.

3. On 27.09.2021, parties were referred to Delhi High Court Mediation and Conciliation Centre for exploring possibility of settlement in this case. However, today this Court is informed that mediation did not prove fruitful.

4. Learned counsel for the petitioner has therefore submitted that the present petition be allowed and an Arbitrator be appointed by this Court.

5. At this stage, learned counsel for respondent has submitted that the



averments made in the present petition are disputed, however, it is agreed that the disputes are arbitrable. Learned counsel also submits that out of the total claimed amount of Rs.40 lacs odd plus interest, without prejudice to the rights and contentions, respondent is willing and ready to pay Rs.10.47 Lacs (after deduction of TDS) to the petitioner. Learned counsel for respondent has handed over a demand draft bearing No. 523555 amounting to Rs.997541.25 to learned counsel for respondent, who has accepted the same.

6. Learned counsel for the petitioner submits that without prejudice to the rights of either side, petitioner is ready to accept this amount, however, for the remaining claim amount of Rs.30 lac odd, the dispute be referred to an Arbitrator.

7. Relevantly, legal notice invoking arbitration was sent by petitioner on 07.10.2020, which was not replied to by the respondent. As per Clause-28 of the Business Partnership Agreement dated 18.04.2016, if the parties are unable to resolve their dispute through negotiations, then it shall be referred to the Senior Management of the parties for resolution, failing which dispute shall be referred to the arbitration by a sole arbitrator appointed by business head of the circle or Managing Director of TTSL or such person duly nominated by either of them and whose decision shall be final and binding



on the parties. However, since both sides have consented that the disputes are arbitrable and consented to the appointment of an Arbitrator by this Court, the present petition is allowed.

8. Accordingly, **Mr. B.R. Kedia, DHJS (Retd.) (Mobile: 9910384682)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

9. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

10. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 05, 2021

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