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

% ***Date of decision: 04.02.2022***

+ **ARB.P. 971/2021**

INTERGLOBE TECHNOLOGY QUOTIENT PVT LTD.

..... Petitioner

Through: Mr. Deepanjan Dutta, Advocate

Versus

SHREE SATI TRAVELS PVT LTD.

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed by the petitioner under Section 11 (4) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator in view of the failure of respondent to give its consent for the appointment of sole arbitrator in terms of Clause 8 (i) of the Subscriber Agreement dated 01.04.2010 executed between the parties.

2. As per office report, notice sent to respondent through ordinary process has been received back with the report 'unserved person is out of station' and service report for the process sent through courier and electronic modes is 'awaited'. However, process sent through speed post has

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been received back with the report “refused”.

3. An affidavit of service dated 24.12.2021 has been placed on record by the petitioner according to which process sent through courier is not delivered as “refused to accept” and e-mail sent to respondent also stands delivered.

4. In view of the aforesaid position, this Court finds that respondent is duly served. However, none has appeared on its behalf. It seems respondent has nothing to oppose in the present petition.

5. Petitioner claims to be in the business of distribution of computerized reservation system owned and operated by Travelport International Operations limited – “Galileo System”. According to petitioner, respondent, who is engaged in business of travel and tourism related services had approached the petitioner in the year 2010 for using the “Galileo System” for booking and the parties entered into the Subscriber Agreement No. ITQPL/BOM/022-613 dated 01.04.2010, which was amended from time to time as part of the overall understanding.

6. According to petitioner, in terms of the aforesaid agreement under Clause 1 and Clause 2.2 (a) thereof, respondent was under contractual obligation to use the said system for all its operations in India. On



01.01.2012, parties entered into an addendum agreement being “Addendum No. 1 to Subscriber Agreement No. ITQPL/BOM/022-613 dated 01.04.2010; then again on 01.03.2012 and 01.08.2013.

7. Learned counsel for petitioner has submitted that in terms of addendum Agreements, the respondent was under the obligation to generate minimum 24,000 segments per quarter which was brought to 15,000 by virtue of last addendum dated 01.08.2013 and clause Clause 3(f) thereof, provides the consequences in the event of failure of respondent to do the needful. Also submitted that in terms of the said addendum agreement, petitioner paid an aggregate and total amount of Rs.3,49,25,086.00 as upfront advance, which was required to be set off against the Productivity Incentive payment that was to be paid by the petitioner to the respondent for generating segments using the said system and that the respondent was very well aware about the categorical and unambiguous contractual obligation to achieve minimum number of segments.

8. Petitioner claims that respondent has been able to achieve only 1,84,041 segments against the target of 5,27,500 segments for the period of May, 2012 December, 2020 and thereby, segments were short by 3,43,459. Further, respondent continuously in successive quarters failed to generate



60% of the Target Segments and so, petitioner sent a legal notice dated 10.02.2021 demanding total amount of Rs.9,18,41,777.00, which was not responded to. Thereafter, petitioner sent a legal notice dated 27.03.2021 invoking arbitration in terms of Clause 8 (i) of the Principal Agreement and proposed name of Hon'ble Mr. Justice (Retired) Servesch Kumar Gupta to act as the sole arbitrator for adjudicating the disputes between the parties. However, the said notice was also not replied to and thus, this petition.

9. Upon hearing and perusal of record of this case, this Court finds that Clause-8(i) of the *Subscriber Agreement* dated 01.04.2010, contains the dispute resolution clause, which notes that the disputes between the parties shall be resolved through arbitration and the venue shall be New Delhi. Further, petitioner by virtue of notice of demand dated 27.03.2021 has invoked arbitration and also proposed the name of Arbitrator, however the said notice was not replied by the respondent.

10. Pertinently, by virtue of Hon'ble Supreme Court's decision in ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.*** 2019 SCC Online SC 1517 the proposal of petitioner to appoint Arbitrator of its choice has become null and void, as in the said decision it has been categorically stated that “no single party can be permitted to unilaterally appoint the Arbitrator,



as it would defeat the purpose of unbiased adjudication of dispute between the parties”.

11. Accordingly, this Court appoints **Ms. Justice (Retd.) Pratibha Rani (Mobile No. 9910384626)** the sole Arbitrator to adjudicate the dispute between the parties.

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

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

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

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 04, 2022
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