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

Pronounced on: 20.12.2023

+ **ARB.P. 895/2022**

LAVA INTERNATIONAL LTD

..... Petitioner

Through: Mr. Nishant Datta, Mr. Pradeep
Bhardwaj, Mr. Chirag Rathi,
Advocates

versus

M/S LAKECITY TELECOM PVT. LTD

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the 'A&C Act') has been filed seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an agreement dated 01.08.2016. In terms of the said agreement, the respondent was appointed as a service provider for providing the Warehousing & Distribution Services to the petitioner from its warehousing facility in Bhopal for the purpose of storing, handling and forwarding the petitioner's products.
3. The said agreement dated 01.08.2016 contains an arbitration clause in the following terms:

“18. **ARBITRATION**

18.1 This Agreement shall be deemed to be made in Noida and any dispute or differences arising between the parties hereto touching or relating to this Agreement shall be settled by reference to two Arbitrators,



one to be appointed by each party hereto. The Arbitrators shall before proceeding the arbitration nominate an Umpire. The Arbitration will be held in accordance with provisions of the Indian Arbitration Act 1996 or any Amendments thereof for the time being in force and all proceedings in such arbitration shall be held in New Delhi.

19. JURISDICTION

Courts at New Delhi shall have exclusive jurisdiction with respect to any reference, disputes etc. under this Agreement.”

4. Due to certain breaches on part of the respondent, the petitioner vide email dated 02.12.2016 has terminated the aforesaid agreement and called upon the respondent to amicably resolve the disputes. It is averred in the petition that respondent has misappropriated the stocks of the petitioner, taking it for their own use and moving it to an unknown location without authorization, consent, or knowledge of the petitioner.

5. It is further averred that on 25.04.2017, a meeting occurred between representatives of the petitioner and respondent. During this meeting, the respondent admitted and acknowledged their obligation to deliver certain handsets to the petitioner. Minutes of the meeting were circulated to all parties via email dated 25.04.2017. Pursuant to the meeting, the respondent sent emails dated 10.07.2017 and 13.07.2017. Vide these emails the respondent is stated to have admitted and acknowledged the liability towards the petitioner regarding the return of the handsets and certain related payments. However, neither the handsets were returned nor payments were made by the respondent.

6. The petitioner vide letter dated 17.05.2022 has invoked the aforesaid arbitration clause. However, no reply thereto is stated to have been sent by the respondent.



7. From a perusal of the aforementioned arbitration clause, it can be seen that the same provides that the arbitration proceedings shall be held in Delhi. Therefore, the seat of arbitration is in Delhi. In **BGS SGS SOMA JV v. NHPC**, (2020) 4 SCC 234, it has been held as under:

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

In **Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.**, 2023 SCC OnLine Del 4894, it has been held as under:

“32. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.”



8. None has appeared on behalf of the respondent in these proceedings despite the notice having been duly served on the respondent.
9. The existence of the arbitration agreement between the parties is evident from the agreement dated 01.08.2016. In the aforementioned circumstances, there is no impediment in appointing an independent sole arbitrator to adjudicate the disputes between the parties, as mandated in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760.
10. Accordingly, Mr. Divyakant Lahoti, Advocate (Mob. No.: 9868541200) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
11. The respondent shall be entitled to raise preliminary objections as regards arbitrability/jurisdiction of the claims which shall be decided by the arbitrator, in accordance with law.
12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.
13. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
14. Parties shall share the arbitrator's fee and arbitral costs, equally.
15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.



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16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

17. The present petition stands disposed of in the above terms.

DECEMBER 20, 2023/hg

SACHIN DATTA, J

Signature Not Verified

Digitally Signed
By: KAMLA KAWAT
Signing Date: 21.12.2023
19:34:07

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