

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

% **Date of order : 16th March, 2023**

+ **ARB.P. 1389/2022**

INNOVISION LTD

..... Petitioner

Through: **Mr.Chirag Jamwal, Advocate**

Versus

NAYATI HEALTHCARE AND RESEARCH NCR PRIVATE LTD

.....Respondent

Through: **Mr.Sumant De, Mr.Rohit Kumar
and Ms.Shagun Bhdana,
Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed on behalf of the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking appointment of arbitrator for adjudication of disputes between the parties arising *qua* the Security Service Agreement dated 3rd January, 2019.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a company that was established in accordance with the terms of the Companies Act, 1956, having its registered office at 1425-A, Sector-B, Pocket-1, Vasant Kunj, New Delhi-110070. It is claimed that the respondent expressed its desire to avail the petitioner's

ARB.P. 1389/2022

Page 1 of 6

security services. To offer security services, the parties signed the Security Service Agreement on 3rd January, 2019. Moreover, the parties additionally signed an extension agreement, which is documented as an Extension Agreement dated 17th March, 2020.

3. Learned counsel appearing on behalf of petitioner submitted that the respondent utilized the services of the petitioner, to which, the petitioner repeatedly asked and reminded the respondent through letters and other communications to pay the outstanding balance. It is further submitted that despite numerous reminders, the respondent failed to do so.

4. It is submitted on behalf of the petitioner that being aggrieved thereof, the petitioner vide notice dated 16th September, 2022 invoked the arbitration clause as provided under the Service Security Agreement. It is further submitted that the respondent failed to reply to the said notice. Resultantly, the petitioner filed an Arbitration Petition bearing no. 518/2020 before this Court for appointment of an arbitrator.

5. It is submitted on behalf of the petitioner that since the above-mentioned petition was filed with incorrect memo of parties, the same was withdrawn.

6. It is submitted on behalf of the petitioner that as the respondent has already received the notice invoking the arbitration clause and has not responded to the same, the dispute that has arisen between the parties is arbitral in nature. It is argued that there has been a blatant breach of the agreement, and as a result, this Court may issue an appropriate order

appointing an arbitrator to resolve the conflict that has arisen between the parties.

7. Learned counsel appearing on behalf of the respondent limits his argument to the effect that the instant petition filed on behalf of the petitioner is pre-mature however, fairly conceded to the arbitral nature of disputes arising between the parties.

8. Learned counsel appearing on behalf of the respondent submitted that according to the provisions of the "Security Service Agreement" executed between the parties on 3rd January, 2019, the petition is premature. The relevant clause 44 of the aforementioned "SSA" indicates and demands that any disputes must be resolved in accordance with the stated provision.

9. It has been submitted on behalf of the respondent that any claims, disputes, or differences (including those relating to the existence, validity, or termination of this Agreement) pertaining to the said agreement, including the interpretation of its terms, will be resolved through joint discussions of the authorized representatives of the parties. It is further submitted that if any such claim, dispute, or difference cannot be settled through such joint discussions, the matter shall be referred for adjudication to the arbitration of a sole arbitrator, who shall be solely appointed by the respondent in accordance with the provisions of the Act.

10. It is further submitted on behalf of the respondent that the petitioner has not given any notice thereon requesting the holding of any joint talks. Hence, the present procedures are premature and the dispute

resolution requirement (Clause 44 of the SSA) is not satisfied.

11. Learned counsel appearing on behalf of the respondent, during the course of arguments did not dispute the existence of the notice under Section 21 of the Act, as served by the petitioner upon the respondent invoking the arbitration clause.

12. Learned counsel appearing on behalf of the petitioner in response to the objections raised on behalf of the respondent sought to place reliance upon an e-mail dated 11th May, 2020 and 12th May, 2020 appended as Document P/4 (colly.), submitting to the effect that a meeting between the parties had taken place thereby duly exhausting the pre-requisites before invoking the arbitration clause.

13. Heard the learned counsel appearing on behalf of the parties.

14. This Court has perused the documents as relied upon the petitioner and is of the view that the pre-arbitration mechanism has been duly complied with, by the petitioner.

15. Furthermore, the position with respect to issue in the present case is no more *res integra* as the same has been settled by the Hon'ble Supreme Court in a catena of judgments that a contract provision demanding negotiation before arbitration was found to be directory. Such clauses are deemed invalid since, it is only a promise to discuss and solely convey a devout hope. The Hon'ble Supreme Court in its judgment titled as *Visa International Ltd. v. Continental Resources (USA) Ltd., (2009) 2 SCC 55 & Demerara Distilleries (P) Ltd. v. Demerara*

Distillers Ltd., (2015) 13 SCC 610 held that the necessity of mutual consent to try an acceptable settlement is unnecessary, if it would be a mere formality and there is no possibility of an amicable resolution.

16. In view of the foregoing discussion and consent of the learned counsel appearing on behalf of the parties, this Court is inclined to allow the prayer of the petitioner and refer the disputes/ disagreements between the parties with respect to the Security Service Agreement dated 3rd January, 2019, to an Arbitral Tribunal for their redressal. Hence, the following order:

ORDER

- (i) Since, both the parties have consented for appointment of sole arbitrator, the Delhi International Arbitration Centre is directed to appoint a sole arbitrator from the panel of arbitrators to adjudicate the disputes between the parties which have arisen under the Security Service Agreement dated 3rd January, 2019, under the aegis of the Delhi International Arbitration Centre;
- (ii) The arbitration shall be conducted under the Delhi International Arbitration Centre. The sole arbitrator shall ensure compliance of necessary disclosure under section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The fee of the appointed sole arbitrator shall be in accordance with the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November,

2022;

- (iv) All contentions of the parties are expressly kept open including any preliminary objections which may be raised by the parties before the sole arbitrator;
- (v) The parties shall appear before the Coordinator, Delhi International Arbitration Centre, New Delhi on 20th March, 2023.

17. A copy of the order be forwarded to Delhi International Arbitration Centre (DIAC) for information and necessary compliance.

18. With the aforesaid directions, the instant petition is disposed of in the aforesaid terms along with pending applications, if any.

19. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 16, 2023
SV/UG

Click here to check corrigendum, if any