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

+ **ARB.P. 163/2024**

SMARTWORKS TECH SOLUTIONS PRIVATE LIMITED

..... Petitioner

Through: Mr. Ashok Mathur & Mr. Ankit
Kohli, Advocates.

versus

DRSTI COMMUNICATIONS & ANR.

..... Respondents

Through: Mr. Durgha Prakash Venogopal &
Ms. Amrita Sharma Advocates for
R-1.
Mr. Sumeet Anand, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

22.04.2024

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1. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of a sole Arbitrator to adjudicate the disputes having arisen between the parties.

2. It is submitted that the petitioner and the respondent Nos. 1 and 2 entered into the Leave and Licence Agreement dated 20.02.2023 (*hereinafter referred to as the "Agreement dated 20.02.2023"*), wherein the respondent No. 2 agreed to grant respondent No. 1 exclusive rights/licence to monetise the media spaces, promotional spaces and advertising digital signage as well as to optimise the commercial value of such spaces at various co-working spaces of respondent No.2 in lieu of revenue



sharing/licence fee payable to the petitioner as per the terms of the Agreement dated 20.02.2023. Accordingly, the petitioner raised an invoice for payment of the Licence Fee of Rs. 12,39,000/- dated 08.08.2023 (Invoice No. 1) which was to be paid within 10 days of raising the same for the duration of 01.04.2023 to 30.06.2023. But the respondent No. 1 had failed to make the payment against the Invoice No. 1 dated 08.08.2023 within the stipulated time, for which the petitioner issued a Breach and Cure Notice *vide* E-mail dated 17.08.2023 in terms of Agreement dated 20.02.2023 thereby giving the respondent No. 1 a period of 15 days to it to cure the breach and make the payments.

3. The respondent again failed to make payment within the agreed timelines and pursuant to such failure, the petitioner issued a Termination Notice dated 06.09.2023 to the respondent No. 1 thereby terminating the Agreement dated 20.02.2023, wherein the respondent No. 1 was required to make a payment of Rs. 7,70,000/- plus applicable taxes.

4. The respondent No. 1 also failed to make against the Invoice dated 05.10.2023 within 10 days in terms of the Agreement dated 20.02.2023.

5. Since the respondent No. 1 defaulted in making payment of both the Invoices dated 08.08.2023 and 05.10.2023 for the sum of Rs. 12,39,000/- and Rs. 9,51,023/- respectively, the petitioner issued the Demand Notice dated 10.10.2023 demanding the said payments followed by the Notice dated 20.11.2023 for payment and settlement of dispute. The respondent No. 1 *vide* E-mail 21.11.2023, in response to the said Notices, refused to make the payment against the said two Invoices and instead raised frivolous allegations.

6. Despite several correspondences exchanged between the parties, the



respondent No. 1 has not made any payment.

7. The petitioner issued the Notice under Section 21 of the Act, 1996 for dispute resolution in consonance with the Agreement dated 20.02.2023.

8. It is submitted that despite having been made the innumerable efforts for resolution through conciliation for a period of more than 30 days, no agreement could be arrived at between the parties. Thereafter, the petitioner issued the Notice of Invocation of Arbitration dated 07.12.2023 thereby invoking arbitration.

9. The petitioner left with no option has filed the present petition seeking appointment of a sole Arbitrator.

10. Despite opportunity having been given *vide* Order dated 11.03.2024, the respondents have failed to file any Reply.

11. Learned counsel for the respondent No. 2 submits that he has no objection if the present petition is allowed.

12. **Submissions heard.**

13. In view of the Agreement dated 20.02.2023 *inter se* the parties, which contains the Arbitration Clause, the present petition is allowed, Ms. Aruna Tikku, Advocate, Mobile No. 9810104685, is hereby appointed as the sole Arbitrator to adjudicate the disputes between the parties.

14. The parties are at liberty to raise their respective objections before the Arbitrator.

15. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.

16. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.



17. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

18. Accordingly, the present petition is disposed of in the above terms.

NEENA BANSAL KRISHNA, J

APRIL 22, 2024

S.Sharma