



\$~2

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

+ **ARB.P. 412/2023**

AERIS COMMUNICATION INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Shashank Deo Sudhi & Mr. Aru
Prakash, advocate (through VC)

versus

OM JAY EV LIMITED

..... Respondent

Through: Mr. Gaurav Adusumall and
Mr. Niroop, Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

22.01.2024

%

By way of the present petition has been filed under Section 11 (2) and (6) of the Arbitration and Conciliation Act, 1996 for the appointment of a sole arbitrator for adjudication of disputes inter se the parties arising out of the Primary Agreement dated 16.08.2021. Clause 11 of the agreement contains the arbitration clause.

Learned counsel for the petitioner submits that the procedure provided under Section 11 of the A&C Act has already been exhausted. Clause 11 of the agreement provides the venue for the arbitration proceedings at New Delhi. The clause of arbitration has duly been invoked vide notice dated 02.12.2022. The claim amount is stated to be Rs. 1,12,74,775/-.

In view of the judgment of the Hon'ble Supreme Court i.e., "*In Re: Interplay Between Arbitration Agreements Under The Arbitration And*



Conciliation Act 1996 and The Indian Stamp Act 1899” Neutral Citation: 2023 INSC 1066; the examination of the arbitration agreement with regards to Stamp duty paid or not no more falls within the domain of this court.

Learned counsel for the respondent also submits that he has no objection and an arbitrator may be appointed.

Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, Mr. Anil Kaushik, Senior Advocate (Mobile No. 9810414419) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.



The petition is disposed of in the above terms.

JANUARY 22, 2024/rb

DINESH KUMAR SHARMA, J