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

+ ARB.P. 606/2022, I.A. 14460/2022

FUSIONNET WEB SERVICES PVT LTD Petitioner

Through: Appearance not given

versus

M/S YASH FIBER NETWORK & ANR. Respondents

Through: Mr. Tejvir Bhatia, Mr. Kunal Vats,
Advts.

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+ ARB.P. 607/2022, I.A. 14461/2022

FUSIONNET WEB SERVICES PVT LTD Petitioner

Through: Appearance not given

versus

M/S OM FIBER NETWORK & ANR. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
19.03.2024

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1. These are petitions seeking appointment of an arbitrator to adjudicate the disputes between the petitioner and the respondents.
2. It is stated by the learned counsel for the respondents that he does not wish to file a reply and his application being an application under Order VII Rule 11 be read as a reply to the petition.
3. In the present case, the petitioner entered into a franchise and



consultancy agreement with the respondent on 01.09.2018.

4. The obligations of the franchise i.e., the respondent are contained in clause 4.1 to 4.4 and 4.11 which read as under:

“4.1 Franchise will leverage its relationships to help organize Internet Service in designated Service Area for provisioning Internet and related services during the term of this Agreement.

4.2 Franchise shall be responsible for marketing, promotions, sales and distribution of the service to the ultimate subscribers and/or customers of Internet Services in Service Area.

4.3 Franchise shall help Service Provider to develop and market the Value Added Services along with Internet Services.

4.4 Franchise will provide full support in submission of details or information as required by Service Provider for Service Provider's use or submission of information to the concerned Govt. Departments including various ministries in time as per the License Agreement entered into with Government of India, Ministry of Communication & IT, and Department of Communication (DOT) and also to Telecom Regulatory Authority of India (TRAI).

4.11 The Franchisee undertakes not to provide, transmit, repeat, facilitate or distribute the data and internet Services in any other mode other than the service provider's plans.”

5. The arbitration clause is contained in clause 12 of the said agreement which reads as under:

“12. ARBITRATION & GOVERNING LAW

If any dispute arises between the Parties during the subsistence of this AGREEMENT or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provisions of this AGREEMENT, the dispute shall be referred to a Sole Arbitrator, to be chosen solely by the Service Provider, for Arbitration by the Parties under the Indian Arbitration and conciliation Act, 1996 or any of its statutory modifications,



amendments or enactments thereof, and the same shall govern the arbitration proceedings. The arbitration proceedings shall be in English language and the venue of arbitration shall be Delhi. The award granted by the Arbitrator shall be binding on the Parties.”

6. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 18.01.2022. Since the disputes were pending, the present petition has been filed.

7. Learned counsel for the respondent states that there is no arbitral disputes between the parties. He states that in view of Section 14 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 and Section 15 of the Act, it is the TDSAT which will be the authority to adjudicate the disputes between the parties.

8. The learned counsel relies on the judgment of this Court in “***Gaur Distributors vs. Hathway Cable & Datacom Ltd.***” [ARB.P. 129/2016].

9. I have heard learned counsel for the parties.

10. Section 14 and Section 14(A) of the TRAI Act reads as under:

“14. Establishment of Appellate Tribunal.- *The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to-*

- (a) Adjudicate any dispute—*
- (i) Between a licensor and a licensee;*
 - (ii) Between two or more service providers;*
 - (iii) Between a service provider and a group of consumers.*

Section 14A: Application for settlement of disputes and appeals to Appellate Tribunal.- *(1)The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a)of Section 14.*

.....”



11. A perusal of the above clearly shows that the TDSAT will have power to adjudicate disputes between the licensor and licensee, two or more service providers, service provider and a group of consumers.

12. In the present case, a perusal of the obligations of the franchise clearly shows that the franchise/respondent is only engaged to market, promote, sale and distribute the services of the petitioner to the ultimate subscribers and develop the market for the petitioner.

13. In essence, the job of the respondent is to promote the services provided by the petitioner and to ensure its smooth operations.

14. The argument of learned counsel for the respondent that the respondent is covered under “any other person” mentioned in section 14(A) is also misconceived as it only deals with applications which may be moved to the Appellate Tribunal and not as regards the disputes which have mentioned in section 14(a)(i)(ii)(iii). The person mentioned in 14A(1) can only refer the disputes contemplated u/s 14(a). Hence, the scope of Section 14A(1) is restricted to disputes within the contours of Section 14(a).

15. The definition of licensee is as under:

“2(e) “licensee” means any person licensed under sub-section (1) of Section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;”

16. The definition of service provider is as under:

“2(j) “service provider” means the [Government as a service provider] and includes a licensee;”

17. In my understanding, the respondent is neither a licensor, licensee nor a service provider. Admittedly, the respondent is not a group of consumers.

18. The judgment relied upon by the respondent, namely **Gaur**



Distributors (supra) is also not applicable as in para 5 of the judgment, it has clearly been mentioned as under:

“5. It is an undisputed fact that both the petitioner as well as the respondent are 'service providers' within the meaning of Section 14(a)(ii) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") therefore, it is to be examined as to whether the dispute is arbitrable or as per Section 15 of the TRAI Act it is only to be determined under the Telecom Disputes Settlement and Appellate Tribunal (hereinafter referred to as "TDSAT") which has exclusive jurisdiction to entertain and adjudicate the present disputes.”

The parties were both service providers in the above case.

19. In the present case, for the reasons stated, I am of the view that the respondent does not come within the definition of a licensee or a service provider.

20. For the reasons stated, the petitions are allowed and disposed of with the following directions:

- i) Mr. Suryadeep Singh (Adv.) (Mob. No. 9899957555) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) 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.

- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

MARCH 19, 2024/DM

Click here to check corrigendum, if any