



2024:DHC:9277



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

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Date of Decision : 29.11.2024+ **ARB.P. 598/2024**

SOFTWARE TECHNOLOGY PARK OF INDIA

.....Petitioner

Through: Mr. Ankur Sood, Mr. Dhaman
Trivedi, Advs.

versus

COVENANT INFOSOLUTIONS PVT. LTD.

.....Respondent

Through: Mr. Arvind Kumar Shukla, Mr.
Vishal Maurya, Mr. Sanskar
Krishnan, Mr. Nihal Ahmad, Advs.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter "*the A&C Act*") seeks appointment of an independent sole arbitrator in terms of Clause 8.1 of Leave and License Agreement dated 30.01.2023 (hereinafter referred as '*the agreement*') entered into between the parties.
2. The Agreement was executed between the parties in respect of premises located at STPI-Incubation Centre Block No. 24, SDA Complex, Kasumpti, Shimla H.P-171009.
3. The petitioner, upon the request from the respondent consented to allow the respondent to temporarily use the raw space admeasuring 2432 sq. ft. in the above premises. For the aforesaid purpose the agreement was



executed between the parties. It is alleged in the petition that during the continuation of the agreement, the respondent defaulted in depositing the license fee with effect from April 2023. Consequently, there are arrears of outstanding license fee payable by the respondent to the petitioner even as the respondent continues to be in occupation of the premises.

4. The arbitration clause in the Agreement is in the following terms :-

“8.1 Dispute Resolution:

8.1.1 If any disputes or differences of any kind whatsoever arise between the parties in connection with or arising out of or relating to or under this Agreement the parties shall promptly and in good faith negotiate with a view to reaching an amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above-mentioned disputes or differences arose such disputes or differences shall be referred to the Sole Arbitrator to be appointed from amongst the panel of 3 names to be nominated by the Director General of the Licensor. The Director General with the express consent of the parties in writing shall appoint Sole Arbitrator from amongst the names suggested by the Director General and agreed to by the Parties. In the event that the parties fail to appoint an arbitrator with mutual consent within 30 days of the names suggested by the Director General of the Licensor for appointment of sole arbitrator, the appointment of sole arbitrator shall be made in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be at New Delhi. The award made by the arbitrator shall be binding on the parties hereto. Such arbitration shall be governed by the Arbitration and Conciliation Act, 1996 as amended upto date. The language for the conduct of Arbitral Proceedings shall be English.

8.1.2 Without prejudice to the generality of the above disputes between the parties whether in relation to any interim relief challenge to any award of the arbitrator or otherwise shall be subject to the exclusive jurisdiction of the courts within whose territorial jurisdiction the seat of Arbitration falls/is located.”

5. Disputes having arisen between the parties, various communications were exchanged between the parties leading upto a legal notice dated



05.09.2023.

6. Since the disputes remain unresolved, a communication dated 05.01.2024 was issued by the respondent whereby the petitioner invoked the arbitration clause contained in the Agreement.

7. Since the parties were unable to constitute an arbitral tribunal with mutual consent, the present petition has been filed by the petitioner.

8. Learned counsel for the respondent does not dispute the existence of the arbitration agreement, however, he submits that the respondent is agreeable to handover the premises to the petitioner immediately subject to the respondent being allowed to remove his goods from the premises. Learned counsel for the petitioner questions the *bona fide* of the said offer of the respondent.

9. It transpires during the course of hearing that the proceedings under Section 9 of the A&C Act have also been initiated by the petitioner in which certain interim directions have been issued. In these proceedings, the Court is not concerned with the respective contentions of the parties as regards the merits of the matter; the scope of the inquiry in the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties. The same has been conclusively and authoritatively laid down by the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532, and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.

10. Since the existence of the arbitration agreement is evident from a perusal of the agreement which has not been denied by the respondent, there is no impediment to constitute an arbitral tribunal to adjudicate the disputes



between the parties. Further, in terms of the judgment of the Supreme Court *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Limited*, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, (2019) 5 SCC 755, it is incumbent upon this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

11. Accordingly, Mr. Pramod Aggarwal, Advocate (Mob. No.: +91 9999105066) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. In case the respondent seeks to settle the matter, it shall be entitled to make a request in this regard to the learned Sole Arbitrator. The learned Sole Arbitrator shall consider the same and encourage the parties to amicably resolve the issue as contemplated under Section 30(1) of the A&C Act.

13. The respondent shall be entitled to raise appropriate objections as regards limitation/jurisdiction, if any, before the learned Sole Arbitrator which shall be duly considered and decided by the learned Sole Arbitrator before adjudication of the claim/s on merits.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. 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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17. The present petition stands allowed in the above terms.

SACHIN DATTA, J

NOVEMBER 29, 2024/at