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

+ **ARB.P. 752/2023**

SAVITHRI DIGITAL COMPUTERS Petitioner

Through: Mr Karthik Sundar, Adv. (through VC)

versus

HEWLETT-PACKARD FINANCIAL

SERVICES (INDIA) PRIVATE LIMITED Respondent

Through: Mr Vikas Mehta and Mr Ankit Vashisht, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

05.04.2024

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1. This is a petition under Section 11 (6) of the Arbitration & Conciliation Act, 1996 (1996 Act) seeking appointment of an Arbitrator to adjudicate disputes between the parties arising out of Master Rental and Financing Agreement dated 14.05.2013.

2. The arbitration clause is contained in 25.1 of the Master Rental and Financing Agreement dated 14.05.2013 which reads as under:

“25.1 Governing law and arbitration

This agreement and each lease, financing and financing with charge is governed by the laws of India. Any dispute and differences whatsoever between the parties arising out of or relating to the construction, meaning and operation or effect of any fundamental agreement or the breach or termination hereof shall be settled amicably. If the parties fail to achieve amicable settlement within 30 days, such dispute or differences shall be referred to arbitration in accordance with the Indian Arbitration and conciliation Act 1996



and any amendments or re-enactments thereof.

The arbitration shall be conducted by a sole arbitrator who shall be a retired Judge of the High Court or Supreme Court or a Legal professional of more than 10 years standing nominated by us. The venue of arbitration shall be Delhi, India and arbitration shall be conducted in the English language.

The Award made in pursuance thereof shall be binding on the parties. Each Party may apply to a competent court for preventive or interim relief pending completion of the arbitration proceedings. The cost of appointing the arbitrator and the cost of arbitration shall be borne by you. The parties agree to use their best endeavours to complete the arbitration proceeding within 90 days from the date of appointment of arbitrator.”

3. As per Mr Sundar, learned counsel for the petitioner, the petitioner invoked the arbitration clause vide e-mail dated 04.09.2018. The e-mail dated 04.09.2018 reads as under:

“Dear Sirs,

This is with regards to an outstanding amount of Rs 42,75,000 (Rupees Forty Two lakhs and Seventy Five thousands only) which is payable by HP Finance to SDPPL on account of refund of Rental Advance as envisaged in the lease rental agreement signed on 4th July, 2013 for Indigo Print machine S No. IL32000261

As you may be aware of, we had entered into a lease rental agreement with HP Finance (Agreement No: 5193026289/IND/JSK/S/1/A1) for taking the captioned-HP Indigo machine on lease. We had paid a rental advance of Rs 42.75 lakhs



and a quarterly equated instalment of lease rental as per the agreement. As acknowledged by you through earlier mails, we have paid the total lease rentals outlined in the agreement, and have bought out the machine for an agreed sum of Rs. 65,15,413 (Rupees Sixty five lakhs fifteen thousand four hundred and thirteen only) as on 15/06/2017 bearing Invoice No: 230000507326. As per the agreement, the rental advance has to be adjusted against the sale consideration. However, in spite of our repeated requests, HP Finance has neither adjusted the rental advance against the sale consideration nor repaid the advance, which is due to be repaid to us. We were forced to make full payment under protest (without adjustment of rental advance) towards sale consideration, for the sake of continuity of business without disruption.

Through this email we are requesting you to expedite this payment.

We are willing to amicably settle this issue with you.

We are prepared to meet you at a time that you indicate as convenient for the purpose of amicable settlement.

Awaiting your response”

4. Mr Mehta, learned counsel for the respondent states that the same cannot be construed as a notice under Section 21 of the 1996 Act and states that in order to invoke the remedies under Section 11, Section 21 notice is a **pre-requisite**. He relies upon the judgment passed by the Hon’ble Supreme Court in ***Bharat Sanchar Nigam Ltd. & Anr. V. Nortel Networks India Pvt. Ltd., (2021) 5 SCC 738.***

5. I have heard learned counsel for the parties.

6. In the present case, the e-mail dated 04.09.2018 is only purported



notice under Section 21. This Court vide order dated 18.03.2024 passed in ARB.P. 558/2023 titled as “***The Prasar Bharati v. Visual Technologies India Pvt. Ltd.***” has held as under:

“9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-

- a. The dispute between the parties.*
- b. The demand to resolve the disputes as per the envisaged arbitration clause.*
- c. In case, the disputes are not resolved the intention to resort to the arbitral process.*
- d. The notice must be sent to the respondent.”*

7. A perusal of the e-mail dated 04.09.2018 shows that it does not indicate the intention of the parties to initiate the process of arbitration in case the disputes are not resolved between the parties.

8. Para 15 of ***Bharat Sanchar Nigam Ltd. (supra)*** is extracted below which also states that in the absence of Section 21 notice, section 11 petition will not lie.

“15. It is now fairly well-settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30



days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.”

9. For the said reasons, I am unable to entertain the present petition and the same is dismissed.

JASMEET SINGH, J

APRIL 5, 2024/sr

Click here to check corrigendum, if any