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

+ **ARB.P. 865/2024**

HEWLETT-PACKARD FINANCIAL SERVICES

(INDIA) PRIVATE LIMITED

.....Petitioner

Through: Ms. Tanya Kanojia and Mr.
Sukrit R. Kapoor, Advs

versus

KUBER DIGITAL STUDIO

.....Respondent

Through: Mr. Samrat Nigam, Mr. Jitendra
Thakur, Mr. Ghulam Sarwar and Ms. Arpita
Rawat, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

27.08.2024

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1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a Master Rental and Financing Agreement dated 12 October 2021, which envisages resolution of disputes by arbitration, thus:

“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 or differences whatsoever between the parties arising out of or relating to the

¹ “the 1996 Act” hereinafter



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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 difference 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 the 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 costs of appointing the arbitrator and the costs of arbitration shall be borne by you. The parties agree to use their best endeavours to complete the arbitration proceedings within 90 days from the date of appointment of the arbitrator.”

3. Disputes between the parties having arisen, the petitioner addressed a notice to the respondent under Section 21 of the 1996 Act, invoking arbitration on 20 January 2024.

4. As the parties have not been able to arrive at a consensus regarding arbitration, the petitioner has moved this Court under Section 11(6) of the 1996 Act for referring the disputes between the parties to arbitration.

5. The Supreme Court has, in its recent decision in *SBI General Insurance Co Ltd v. Krish Spinning*², held that a Court exercising jurisdiction under Section 11(6) of the 1996 Act, is only required to

² 2024 SCC OnLine SC 1754



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examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the *court is to see nothing else*. The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.

6. Both these conditions stand satisfied in the present case.
7. Mr. Samrat Nigam, learned counsel for the respondent does not oppose the reference of disputes to arbitration but prays that liberty may be reserved with him to take all grounds of fact and law as may be available before the learned Arbitrator. He also seeks permission to move the learned Arbitrator seeking permission to implead M/s Redington Ltd as an additional party in the arbitral proceedings.
8. Accordingly, the disputes stand referred to arbitration.
9. This Court requests Mr. George Pothan Poothicote, Advocate (Mob: 8130959645) to arbitrate on the disputes between the parties.
10. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations.
11. The learned arbitrator shall be entitled to fees as per the schedule of fees maintained by the DIAC.



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12. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

13. All questions of fact and law, as well as the right to implead M/s Redington Ltd as an additional party in the proceedings, shall remain open to be urged before the Arbitrator. This Court has not expressed any view on any aspect, preliminary or on merits.

14. The petition stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

AUGUST 27, 2024/yg

Click here to check corrigendum, if any