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

+ **ARB.P.-1143/2023 & I.A. 42162/2024**

INFORMATION TV PRIVATE LIMITED Petitioner

Through: Mr. Siddharth Bambha, Mr. Rohit
Bohra & Ms. Nandana Menon, Advs.

versus

JITENDRA DAHYABHAI PATEL Respondent

Through: Mr. Aditya Choksi, Mr. Arpit Gupta
and Mr. Divya Pratap Parmar, Advs.
(M:7567360018)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **25.10.2024**

1. This hearing has been done through hybrid mode.

I.A. 42162/2024 in ARB.P.-1143/2023

2. The present application has been moved by the Respondent seeking a clarification of final order dated 6th February, 2024 as to who has to bear the costs of the arbitration in respect of the claim and counter claim.

3. A perusal of the order dated 6th February, 2024 shows clearly that the entire cost of the arbitration has to be borne by the Petitioner. This is clear from a reading of paragraph 18 and 19 which read as under:

“18. In view of the above position, the following directions are issued:

i) The disputes between the parties arising out of MoU dated 1st May, 2018 are referred to arbitration by a Sole Arbitrator. Mr. Sandeep Mahapatra, Advocate (Address: F-112 City Apartment, Vasundhra Enclave, Delhi-110096, Mob No.9811472444, email: sandeepmahapatra1advocate@gmail.com) is appointed as the Sole Arbitrator to adjudicate



the disputes. The arbitration shall take place under the aegis of the DIAC. The fee of the Sole Arbitrator would be as per the IV Schedule of the 1996 Act, as modified by the DIAC Rules.

ii) At this stage, due to the delay and the manner in which the Section 11(6) petition has been filed by the Petitioner, post the closure of the criminal proceedings, with the consent of parties, it is directed that the Petitioner shall bear the entire cost of the arbitral proceedings, subject to the final award to be passed by the ld. Arbitrator. In the final award, ld. Arbitrator is free to apportioned the cost in the manner as it deems appropriate;

iii) In regard to the order passed under Section 9 of the 1996 Act, since it remains in effect until the conclusion of arbitral proceedings, and considering the substantial delay in invoking the arbitration clause between 2020 and 2021 up to the filing of the Section 11(6) petition, the ld. Arbitrator shall decide. Should the Petitioner seek any continuation of the said order, they must approach the ld. Arbitrator. Any such application under Section 17 of the 1996 Act would be considered on its own merits.

iv) The closure report in relation to any criminal proceedings or any observations made in the Section 9 petition or in the present petition shall not have any bearing on the final adjudication by the ld. Arbitrator.

19. The Respondent is free to file its counterclaim also before the ld. Arbitrator.”

4. The difficulty appears to be that the claim of the Petitioner is to the tune of approximately Rs.2 crores with the prayer for injunction but the



counter claim of the Respondent is to the tune of Rs. 10 crores. As per the Delhi International Arbitration Centre ('DIAC') the total fee of the Arbitrator is coming to Rs. 18,42,242/- along with Rs. 50,000/- for the miscellaneous expenses. Thus, the DIAC has asked the Petitioner and the Respondent to pay a fee of Rs. 9,71,121/-.

5. A perusal of the judgment dated 6th February, 2024 shows that the Petitioner has to bear the entire cost. However, considering the claims and counter claims, this Court fixes a lumpsum fee for the Id. Arbitrator, of Rs.10,00,000/- for adjudicating both the claims and the counter claim. The entire amount of Rs.10,00,000/- with the administrative fee of Rs.50,000/- shall be deposited by the Petitioner with the DIAC, within a period of eight weeks from today. Upon deposit of the Arbitrator's fee of Rs.10,00,000/- and the administrative fees of Rs.50,000/-, Id. Arbitrator shall proceed with the matter. 50% of the fee can be released by the DIAC at this stage and 50% can be released at the time when the award is passed.

6. List before the Arbitrator on 22nd January, 2025.

7. Application is disposed of.

8. Copy of this order be communicated to the **Ld. Arbitrator - Mr. Sandeep Mohapatra, Advocate (M:9811472444).**

PRATHIBA M. SINGH, J.

OCTOBER 25, 2024

dj/bh