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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1422/2022 & I.A. 24561/2023

HITACHI SYSTEMS PRIVATE LIMITED

..... Petitioner

Through: Mr. Siddhant Buxy, Mr. Debanshu
Khettry, Ms. Akansha Sood, Advs.

versus

M/S ACER INDIA PVT LTD

..... Respondent

Through: Mr. Sundar Ramanathan, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.02.2024

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1. The learned counsels for the parties have no objection to this Court hearing the matter.
2. This is a petition seeking appointment of an Arbitrator in terms of Clause 15 of the Tripartite Agreement dated 16.03.2016. Clause 15 of the Tripartite Agreement reads as under:-

“15.1 Arbitration:

15.1.1 If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived there from, the parties agree to submit that dispute to arbitration under the ICADR Arbitration Rules, 1996.

15.1.2 The Authority to appoint the arbitrator(s) shall be the International Centre for Alternative Dispute Resolution



(ICADR).

15.1.3 The International Centre for Alternative Dispute Resolution will provide administrative services in accordance with the ICADR Arbitration Rules, 1996.

15.2 Conciliation:

15.2.1 If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived there from, the parties agree to seek an amicable settlement of that dispute by Conciliation under the ICADR Conciliation Rules, 1996.

15.2.2 The Authority to appoint the Conciliator(s) shall be the International Centre for Alternative Dispute Resolution (ICADR).

15.2.3 The International Centre for Alternative Dispute Resolution will provide administrative services in accordance with the ICADR Conciliation Rules, 1996.”

3. It is the case of the petitioner that on account of acts of omission by the respondent, liquidated damages were levied on the petitioner which he wants to recover from the respondent. The same is denied by the respondent on the ground that only the disputes between the petitioner and NICS are covered within the arbitration Clause and the disputes between the petitioner and the respondent are outside the ambit of the arbitration Clause.
4. At the stage of deciding a Section 11 petition, this Court is only



required to see the arbitration Clause and in the present case, the arbitration Clause is admitted between the parties.

5. The fact whether the dispute falls within the purview of the arbitration Clause is to be adjudicated by the Arbitrator.
6. Leaving the said right open to the respondent, I am inclined to allow the petition, and the following directions are issued:
 - i) Mr. Saurabh Seth, Advocate (Mob. No. 9811393402) 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.



7. The original document of the Tripartite Agreement is neither with the petitioner nor the respondent, but the agreement is admitted.
8. The Arbitrator is at liberty to direct NICSI to produce the original agreement if so required.
9. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 8, 2024 / (MS)

Click here to check corrigendum, if any