



\$~6

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

+ **ARB.P. 1415/2024**

M/S DATAGEN INTERNET SERVICES PVT LTDPetitioner

Through: **Mr. Simran Jot Singh, Advocate.**

versus

MOBISOFT TECHNOLOGY INDIA PRIVATE LIMITED & ORS.

.....Respondents

Through: **None.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.05.2025

%

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. On 12.09.2024, notice was issued to the Respondents, returnable on 28.11.2024, on which date, fresh notice was issued, returnable on 27.01.2025. On the adjourned date, matter was deferred for 04.03.2025 as service report was awaited. On 04.03.2025, again fresh notice was issued as Respondents were unserved. On the next date i.e., 06.05.2025, Court took note of the affidavit of service filed by the Petitioner stating that notices were served on 02.05.2025 electronically on the last known e-mail ID address of the Respondents and e-mail had not bounced back. Service was also effected through Whatsapp and publication in two newspapers having circulation in the concerned i.e., English newspaper 'The Hindu' on 29.04.2025 and Marathi newspaper 'Lokmanthan' on 27.04.2025. In the



interest of justice, adverse order was deferred, making it clear that if Respondents chose not to remain present on the next date, despite service, Court would proceed in their absence.

3. This is the second call of the matter. None appeared on behalf of the Respondents on the first call and none appears on the second call. Accordingly, Respondents are set *ex parte*.

4. Factual matrix to the extent necessary and as set out in the petition is that an Agreement dated 20.07.2022 was executed between the parties, whereby Petitioner was to supply bulk SMS services to the Respondents along with other telecommunication services. It is averred that Respondents used the services till 03.09.2022, which proves that they were satisfied with the services rendered. However, when Petitioner raised the invoices as per the statement of accounts, Respondents issued a cheque on 08.09.2022 for Rs. 42,62,039/-, which on presentation was dishonoured on account of 'funds insufficient'. Several legal notices went un-responded and Petitioner thereafter filed a complaint under Section 138 of Negotiable Instruments Act, 1881 and also invoked the Arbitration Clause by sending a notice dated 06.03.2024 under Section 21 of 1996 Act, but again there was no response.

5. It is palpably clear that Respondents are evading service and deliberately avoiding appearance in the Court, despite service. The Agreement between the parties contains an Arbitration Clause for reference of the disputes arising out of the Agreement to a Sole Arbitrator appointed with mutual consent of the parties. There is a clear failure on the part of the Respondents to appoint the Sole Arbitrator, when called upon to do so by the Petitioner. Arbitration Clause 11 is extracted hereunder for ease of reference:-



“In the event of any question, dispute or difference arising under this agreement or in connection there-with the parties shall first attempt to resolve the same mutually and thereafter through Conciliation process as per Arbitration and Conciliation Act 1966. In case the matter is not resolved through Conciliation the same shall be referred to a sole arbitrator appointed with mutual consent of parties. The agreement to appoint an arbitrator will be accordance with the Arbitration and Conciliation Act 1996. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to be apply to the arbitration proceeding under this clause. As per the 10 clause of the agreement dated 20.07.2022, the parties hereby agreed that all legal disputes are subject to Delhi Jurisdiction only.”

6. In view of the aforesaid circumstances and the existence of the Arbitration Clause being undisputed, Court appoints Ms. Shivani Chawla, Advocate (Mobile No. 9873778845) as a Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of DIAC (Administrative Cost & Arbitrators’ Fees) Rules 2018.
7. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.
8. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.
9. Petition is disposed of in the aforesaid terms

JYOTI SINGH, J

MAY 22, 2025

S.Sharma