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

+ **O.M.P.(MISC.)(COMM.) 831/2025**

VIRGO SOFTECH LTD

.....Petitioner

Through: Ms. Sunanda Tulyan, Mr. Akhil Sachar, & Ms. Kashish Maheshwari, Advs.

versus

**NATIONAL INSTITUTE OF ELECTRONICS AND
INFORMATION TECHNOLOGY**

.....Respondent

Through: Ms. Anubha Dhulia and Ms. Pooja Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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03.11.2025

1. The instant petition has been filed under Section 29A (4) and (5) of the Arbitration and Conciliation Act, 1996 [**"Arbitration Act"**] praying for extension of the mandate of the Arbitral Tribunal.
2. Disputes arose between the parties arising out of the Contracts entered into between the Petitioner and the Respondent, whereby the Petitioner was appointed as Managed Service Provider (MSP-1) for the providing the service of Demographic Data Digitization for usual residents of urban areas of Zone-6 Panchkula, Haryana, Zone-23, Moradabad, Uttar Pradesh, Zone-24, Agra Uttar Pradesh and Zone-27, Jalandhar, Punjab.



3. The Contracts in question contained an Arbitration Clause which specified that the arbitration proceedings shall be held in New Delhi. Clause 8.2 reads as under:-

“8.2) a) In the case of dispute arising upon or in relation to or in connection with the contract between the Purchaser and MSP-1, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to the sole, arbitrator nominated by DIT.

b) Arbitration proceedings shall be held in New Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

The decision of the arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Purchaser and MSP-1. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the award. The courts in Chandigarh only shall have exclusive jurisdiction to try and entertain any dispute arising there from.”

4. A notice was under Section 21 of the Arbitration Act was sent by the Petitioner on 16.08.2018. Subsequently, the Petitioner approached this Court by filing various Arbitration Petitions being Arb. Pet. Nos. 1285/2022, 1286/2022, 1288/2022 and 1289/2022, and the Arbitral Tribunal was appointed by this Court *vide* order dated 14.09.2023 to adjudicate upon the disputes arising out of the Contracts in question.



5. Mandate of the Arbitral Tribunal expired on 14.08.2025. Resultantly, the Petitioner has approached this Court seeking extension of mandate of the Arbitral Tribunal for a period of one year.

6. Learned Counsel for the Respondent vehemently objects to the present Petition on the ground that this Court does not have the territorial jurisdiction to entertain the present Petition and the parties must approach the jurisdictional court, that is, the courts in Chandigarh as per Clause 8.2 of the Contract, for seeking extension of time.

7. Learned Counsel for the Respondent urges before this Court that in another petition filed under Section 11 preferred by the Petitioner by this Court in Arb P. No. 754/2018 and Arb P. No. 755/2018, both titled Virgo Softech Ltd. vs. National Institute of Electronics and Information Technology, this Court had concluded *vide* its order dated 30.11.2018 that this Court did not have the territorial jurisdiction to entertain the petition. The challenge to the said order dated 30.11.2018 before the Apex Court in SLP (C) No. 5063-5064/2019 was also rejected by the order dated 25.03.2019 passed by the Apex Court dismissing the SLPs. It is to be noted that the Judgment of this Court in Arb P. No. 754/2018 and Arb P. No. 755/2018 is no longer good in law as the said judgment relies on the Judgment of the Apex Court in Union of India vs. Hardy Exploration and Production (India) INC, **2018 SCC OnLine SC 1640** which is not good in law as held by the Apex Court in BGS SGS Soma JV v. NHPC, **(2020) 4 SCC 234**.

8. On the other hand, learned Counsel for the Petitioner states that the same issue was raised by the Respondent before a Coordinate Bench of this Court in the Arbitration Petitions being Arb. Pet. Nos. 1285/2022,



1286/2022, 1288/2022 and 1289/2022 dealing with an arbitration clause identical to the one involved in the present Petition, and the same was dealt with at Paragraphs No. 4 and 5 of the Order dated 14.09.2023 passed by a Coordinate Bench of this Court while disposing of the set of petitions.

9. Paragraphs 4 and 5 of the Order dated 14.09.2023 passed by a Coordinate Bench of this Court in Arb. Pet. Nos. 1285/2022, 1286/2022, 1288/2022 and 1289/2022 are being reproduced hereunder:

“4. Learned counsel for the respondent is not in a position to deny that similar pleas raised in ARB.P.802/2021 and ARB.P.804/2021, were rejected by the Co-ordinate Bench.

5. Having perused the decision of the Coordinate Bench in Virgo Softech Ltd. (supra), I find that similar pleas as raised by the respondent in the present petitions, already stand rejected by the Coordinate Bench, by holding that in view of the specific provision in the addendum dated 11.01.2018 the petitioner would be entitled to invoke arbitration, it could not be said that there was no subsisting dispute between the parties.”

10. Perusal of the above-extracted paragraphs shows that it is referring to an ARB.P.802/2021. Learned Counsel for the Petitioner has taken this Court through the judgment dated 05.08.2022 passed by a Coordinate Bench of this Court in ARB.P.802/2021 in a matter titled Virgo Softech Ltd. v. National Institute of Electronic and Information Technology, wherein it has been categorically held that in view of the fact that the arbitration clause



provided for the arbitration proceedings to be held in New Delhi, this Court has territorial jurisdiction to entertain and decide the petition.

11. Even the contention of the learned Counsel for the Respondent regarding the upholding of the order of this Court by the Apex Court in SLP (C) No. 5063-5064/2019, stands covered by the judgment dated 05.08.2022 passed by a Coordinate Bench of this Court in ARB.P.802/2021, by observing as under:

“13. The earlier decision of a co-ordinate Bench of this court, vide order/judgment dated 30.11.2018 in Arb. P. No. 754/2018 and Arb. P. No. 755/2018, from which SLP(C) Nos. 5063-5064/2019 was dismissed in-limine by order dated 25.03.2019, was based on the decision of the Hon’ble Supreme Court in Hardy Exploration (supra). Hardy Exploration essentially said that without an express opinion or determination signifying a ‘place’ as a ‘seat’, the ‘place’ referred to in an arbitration agreement does not “ipso facto assume the status of seat.” Hardy Exploration was overruled in BGS SGS SOMA (supra), since the test in Hardy Exploration was considered to be contrary to the decision of the Constitution Bench in Bharat Aluminium Co. vs. Kaiser Aluminium Technical Service, Inc., (2012) 9 SCC 552 (hereinafter referred to as ‘BALCO’). The test for determination of a ‘place’ as a ‘seat’ was accordingly re-stated to be that unless there is significant contrary indicia “the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

14. Evidently therefore, the position of law as to territorial jurisdiction in relation to the supervisory



role of courts over arbitration, changed post the decision in BGS SGS SOMA (supra); and this happened subsequent to the previous round of litigation between the parties to the present proceedings.”

12. Learned Counsel for the Respondent also places reliance on a judgment of the Apex Court in State of W.B. v. Associated Contractors, (2015) 1 SCC 32. Upon perusal of the said Judgment, this Court is of the view that the observations contained therein do not have any application to the facts of the present Petition, as the Apex Court primarily rendered observation *inter alia* as to why the High Courts alone have been given the jurisdiction to entertain an application under Section 11.

13. In the opinion of this Court, the learned Counsel for the Respondent has not made out any ground for this Court to depart from the judgments dated 05.08.2022 and 14.09.2023. Therefore, this Court is not inclined to accept the objection of territorial jurisdiction raised by learned Counsel for the Respondent.

14. Further, since the parties have mutually decided that the place of arbitration will be New Delhi, and this Court did entertain the petition under Section 11 of the Arbitration Act to appoint an arbitrator in order to adjudicate upon the disputes between the parties to the present Petition, this Court is not inclined to accept the objection raised by the learned Counsel for the Respondent that this Court lacks the territorial jurisdiction to entertain the present Petition.

15. It is stated that the arbitration proceedings are at the stage of cross examination of Respondent's witnesses, and the mandate of the Arbitral



Tribunal has come to an end on 14.08.2025. In the opinion of this Court, there is no laxity in the proceedings of the arbitration, and therefore, this Court is inclined to extend the mandate till 31.10.2026. Further, in view of the judgment of the Apex Court in Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited, **2024 SCC OnLine SC 2494** the period from 14.08.2025 till today is regularized.

16. With the above observations, the Petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 3, 2025

Prateek