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

+ **ARB.P. 1871/2024**

MS ORANGEMANTRA TECHNOLOGY PVT LTD.....Petitioner

Through: **Mr. Vijay Kumar and Mr. Janme Jay,**
Advs.

versus

MS SHL INDIA PVT LTD

.....Respondent

Through: **Mr. Sparsh Bhargava, Ms. Ishita**
Farsaiya and Ms. Vanshika Taneja,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% 28.02.2025

1. Heard learned counsel appearing for the parties.
2. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (**A&C Act**), has been filed for the following reliefs:-

“A. Appoint a Sole Arbitrator from the Delhi International Arbitration Centre (‘DIAC’), to adjudicate upon the dispute and claims as raised by the Petitioner as per clause mentioned in Master Service Agreement dated 10.09.2021.”

3. The facts of the case would indicate that the petitioner is engaged in the software development, providing a range of web and mobility solutions, from web designing to app development, enterprise mobility solutions, e-commerce, social and online marketing, testing, cloud hosting, maintenance and support which includes the entire aspects of the development process.



4. As per the case set up by the petitioner, the petitioner was approached by the respondent for software related services and accordingly, a contract for IT services dated 10.09.2021 was signed between the petitioner and the respondent.
5. One of the pre-conditions of the Master Service Agreement (MSA) dated 10.09.2021 was that during the tenure of MSA and 36 months thereafter, the Respondent would not directly or indirectly solicit or offer employment to or hire any employee, former employee, subcontractor, or former sub-contractor of the other.
6. It is the case of the petitioner that the said conditions were violated.
7. The petitioner while noticing the violation of the said conditions issued the notice dated 26.03.2023 seeking compensation of Rs.17, 81,240/-. Since the demand notice was not acted upon, the petitioner contends that a dispute has arisen which deserves to be adjudicated as per the terms of the agreement and in accordance with the provisions of the A&C Act.
8. Learned counsel appearing for the petitioner refers to the relevant clause which *inter alia* provides that any dispute and/or difference arising out of or relating to the contract shall be resolved through a joint discussion of the parties. The parties shall serve a notice of 30 days on the other party for appointment of an Arbitrator and if the disputes are resolved by the joint discussion, then the matter will be referred for adjudication to a Sole Arbitrator who shall adjudicate the matter as per the provisions of the A&C Act.
9. Learned counsel appearing for the respondent contends that *firstly*, the dispute has arisen after the period of the contract got over, therefore, since the contract no more survives, the arbitration clause also ceased to exist.



Secondly, the joint discussion between the parties to take steps for resolution of the disputes as was required in terms of the agreement in view of the arbitration clause has not taken place and, therefore, the petitioner has incorrectly and illegally invoked the arbitration clause. He, therefore, prays that the petition is not maintainable and thus deserves to be dismissed as being premature.

10. I have considered the submissions made by learned counsel appearing for the parties and perused the record.

11. A legal position so far as it relates to the nature of scrutiny which requires to be undertaken at the stage of appointment of the Arbitrator, is fairly well settled by the various pronouncements of the Supreme Court.

12. Reference can be made to the decisions in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ ***TRF Limited v. Energo Engineering Projects Ltd.***,² ***Bharat Broadband Network Limited v. United Telecoms Limited.***,³ and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***.⁴

13. It is thus seen that there exists an arbitration clause and according to the petitioner, since the notice served by him was not acted upon by the respondent, the same would imply that there would be no useful purpose of relegating the parties for any more discussions further.

14. The Court, therefore, deems it appropriate to appoint Ms. Nikita Capoor (Phone no. 9958289103, Email id: capoornikita@gmail.com) as the sole Arbitrator.

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



15. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

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

17. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

19. The petition stands disposed of accordingly reserving all rights and contentions of the parties.

PURUSHAINDR KUMAR KAURAV, J
FEBRUARY 28, 2025/P/DP

[Click here to check corrigendum, if any](#)

⁴ In re, 2023 SCC OnLine SC 1666.