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

+ **ARB.P. 119/2025**

PROFECTUS CAPITAL PVT LIMITEDPetitioner

Through: **Mr. Varun Chandiok, Adv.**

versus

**MARKETING KING ONLINE PVT LTD
AND ORS.**

.....Respondents

Through: **None**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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21.04.2025

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of an Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.

2. It is stated in the petition that the disputes between the parties emanate from a Revenue Based Financing Agreement dated 02.02.2024 ('Agreement'). It is stated that the said Agreement contains an arbitration clause [Clause 9.7], which provides for adjudication of disputes by arbitration. The said clause reads as under:

“9.7 Any dispute or difference arising between the Parties as to the effect, validity or interpretation of this Agreement or as to their rights, duties or liabilities thereunder, failing amicable resolution through mutual negotiations within 15 days of the start of such negotiation, shall be referred to and settled by arbitration. The arbitration proceedings shall be held in accordance with the Arbitration and



Conciliation Act, 1996 as may be amended from time to time or any subsequent enactment or amendment thereto. The decision of the arbitration shall be final and binding upon the Parties. The seat and venue of arbitration proceedings shall be at Delhi. All arbitration proceedings shall be conducted in English and each Party shall bear its own cost respectively towards the Arbitration.”

3. Learned counsel for the Petitioner states that since there were disputes between the parties, therefore, the Petitioner invoked the arbitration clause vide legal notice dated 23.09.2024, however, the same has not been responded to by the Respondents. He states that in these circumstances, the Petitioner has been constrained to approach this Court under Section 11 of the Act.

3.1. He states that the said Agreement has been signed by Petitioner, Respondent No. 1 and Respondent No. 4.

3.2. He states that Respondents have no intention to make repayments of the principal amount in terms of the said Agreement.

3.3. He states that Respondents are not appearing today despite service. He refers to the order dated 10.03.2025, which records that Respondent No. 1 has been served through e-mail and in fact, Respondent No. 4 was also represented on the said date as recorded in the order.

3.4. He states that he has instructions to submit before this Court that in this petition he seeks reference of Respondent No. 1 and Respondent No. 4 to arbitration and Petitioner reserves its right to move an appropriate application before the learned Arbitrator for impleadment of Respondent Nos. 2, 3, 5 and 6.

3.5. He states that since the claim amount is a sum of Rs. 2 crores, therefore, a former judge of High Court may be appointed as an Arbitrator,



keeping in view the complexity of the dispute. He further states arbitration be conducted under the aegis of the Delhi International Arbitration Centre ('DIAC') and as per DIAC Rules.

Decision

4. At the outset it is noted that this petition is confined to the relief sought against Respondent No. 1 and Respondent No. 4.

5. This Court, vide order dated 17.01.2025 issued notice to the Respondents. Vide order dated 10.03.2025 it has been recorded that Respondent no. 1 has been served by the registry through E-mail and Respondent no. 4 has been served through ordinary service. Moreover, the said order records that Respondent No. 4 was represented as well on the date of hearing of 10.03.2025.

Further an affidavit of service dated 06.03.2025 has been filed on behalf of the Petitioner, which records that Respondent Nos. 1 and 4 have been duly served by the Petitioner along with a copy of the petition through email dated 06.03.2025.

However, none appears on behalf of Respondent Nos. 1 and 4 today. In the aforementioned facts, Respondent Nos. 1 and 4 are deemed to have been served.

6. In view of the fact that there is no appearance on behalf of Respondent Nos. 1 and 4 despite service and since the existence of the Arbitration clause is evident from the perusal of the Agreement placed on record, therefore, this Court is satisfied that Petitioner, Respondent No. 1 and Respondent No. 4 have agreed to refer disputes to arbitration and that the place of arbitration would be Delhi. Further the said clause i.e. 9.7 has been duly invoked by the Petitioner by way of notice dated 23.09.2024.



Accordingly, this Court does not find any impediment to appoint a Sole Arbitrator to adjudicate the disputes between Petitioner, Respondent No. 1 and Respondent No. 4.

7. Further, in view of the judgment of the Supreme Court in case of **Perkins Eastman Architects DPC v. HSCC (INDIA) Limited**, (2020) 20 SCC 760, **TRF Limited v. Energo Engineering Projects Limited**, (2017) 8 SCC 377 and **Bharat Broadband Network Limited v. United Telecoms Limited**, (2019) 5 SCC 755, it is incumbent upon this Court to appoint an independent Sole Arbitrator.

8. In view of the aforementioned facts, the disputes between the parties under the said agreement are referred to the arbitral tribunal with the following directions:

- a. **Hon'ble Ms. Justice Asha Menon (Retd.)**, Delhi High Court (Mob. No. 9910384664) (e-mail: ajudge1960@gmail.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- b. The arbitration will be held under the aegis of the Delhi International Arbitration Centre ('DIAC') and the Rules of DIAC will apply to the arbitration proceedings.
- c. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act before entering into the reference.
- d. The Petitioner shall file its statement of claim within four (4) weeks as per the rules of DIAC.
- e. DIAC is directed to list the matter for a preliminary hearing on or before 31.05.2025 as per the convenience of learned Arbitrator.
- f. DIAC is directed to issue fresh notice to the Respondent No. 1 and 4 in these proceedings.

9. The remuneration of the learned Arbitrator for the arbitration proceedings shall be fixed by the Arbitrator as per her discretion.

10. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims and/or counter claims,



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.

11. The Petitioner will be at liberty to seek appropriate relief qua Respondent Nos. 2, 3, 5 and 6 before the learned Arbitrator, albeit in accordance with law.

12. With the aforesaid direction, the petition stands disposed of.

13. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

14. The registry is directed to send a copy of this order to Organizing Secretary, DIAC for information and compliance and the learned Sole Arbitrator.

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

APRIL 21, 2025/msh/ms

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