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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 2089/2024**

Date of Decision: **26.03.2025**

IN THE MATTER OF:

WANNAMO MARKETING PRIVATE LIMITED

.....Petitioner

Through: Mr.Tuhin Batra, Advocate.

versus

HOUSE OF FITNESS PRIVATE LIMITED

.....Respondent

Through: Ms.Neha Jain, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant petition prays for the following reliefs:-

“a. Appoint a Sole Arbitrator to adjudicate the pending disputes between the Petitioner and Respondent.

b. Pass any other order as it may deem fit under the facts and circumstances of the case and in interest of justice.”

2. As per the case set up by the petitioner, on 23.05.2022, a Service Agreement was entered for procuring its services-‘SingleInterface’ which are primarily SaaS (Software as a Service) hyper-local digital marketing and allied services on a monthly subscription basis.



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3. As per the said Agreement, the respondent was required to pay monthly service fee at the end of each calendar month. The petitioner states that it raised the invoices for the Services commencing from 23.05.2022 and the Respondent paid the invoices for the Services until July 2022. The petitioner then contends that from August 2022 onwards until December 2022, the respondent completely failed to make any payment for petitioner's invoices. The Service Agreement was however terminated by the petitioner due to non-payment of Fee by the respondent after December 2022.

4. It was contended when the payment was not made, the petitioner on 13.03.2023 *vide* email communication requested the respondent to take necessary steps. He then contends that thereafter on 25.05.2023, a legal notice was sent by the petitioner referring to all earlier communications. In the said legal notice, a total outstanding amount of Rs.4,69,068/- was requested to be paid.

5. The respondent replied to the said legal notice *vide* its reply dated 07.07.2023 and denied the claim of the petitioner. It was stated that on account of petitioner's unacceptable and sub-standard quality of service, the respondent suffered heavy loss including the loss of its business, reputation, good-will and brand image.

6. The petitioner thereafter *vide* notice dated 25.08.2023 invoked arbitration clause which find place under Clause 11.7 of the Service Agreement and Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act, 1996).



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7. The respondent replied to the said notice as well *vide* its communication dated 19.09.2023.
8. Since, the parties could not be able to settle their disputes; therefore, the petitioner has approached this Court by way of the instant petition.
9. On notice being issued, the respondent has filed its reply and controverted the averments and the submissions made by the petitioner.
10. Learned counsel appearing on behalf of the respondent takes this Court through Clause 11.7 of the Service Agreement and she contends that if the same is considered in right perspective, it would indicate that the any dispute with respect to validity, interpretation, implementation or alleged breach of any provision of the Agreement, is not amenable to be referred to the Arbitrator. In addition, learned counsel further contends that the petitioner has not availed 30 days time for resolving the dispute by conciliation; and therefore, the instant petition is pre-mature and deserves to be dismissed.
11. I have heard learned counsel appearing on behalf of the parties and perused the record.
12. Clause 11.7 of the Service Agreement reads as under:-

"11.7. Arbitration: If any dispute, difference, claim or controversy (the "Dispute") arises between the Parties about the validity, interpretation, implementation or alleged breach of any provision of this Agreement, the Parties shall make efforts to negotiate in good faith and resolve the Dispute(s) within 30 days of its communication by either Party. Upon failure of Parties to mutually resolve the Dispute, the same shall be referred to a sole Arbitrator mutually appointed by the Parties. The



arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, as amended. The Arbitral proceedings shall be concluded within 90 (ninety) days from a valid appointment of the sole arbitrator. The seat and venue of arbitration shall be at New Delhi, India. The award of arbitrator shall be final and binding on the Parties.”

13. A bare perusal of the aforesaid clause *inter alia* provided for resolution of the disputes, difference, claim or controversy arises between the parties about the validity, interpretation, implementation or alleged breach of any provision of this Agreement. It would thus be seen that even any claim or controversy which has any relevance to the Service Agreement is amenable to be adjudicated by way of arbitration.

14. Reading of Clause 11.7 of the Service Agreement in the manner suggested by learned counsel would amount to inception of the words and limiting the scope of Clause 11.7 of the Service Agreement, which, at this stage, is not permissible.

15. The aforesaid submission, however, can be looked into by the Arbitrator and the respondent herein shall be at liberty to raise all those objections before the arbitrator.

16. So far as the objection with respect to non adherence to the 30 days conciliation notice is concerned, the facts of the case would clearly indicate that the dispute was first raised by the petitioner on 13.03.2023; and thereafter, various communications have been exchanged with respect to alleged unsettled claim. Even the first notice was served by the petitioner on 25.05.2023; and thereafter, an Arbitration Clause 11.7 was invoked by sending a notice dated 25.08.2023.



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17. It is thus seen that under the facts of the present case, the aforesaid requirement is also fulfilled and therefore, the petition, at this stage, cannot be said to be pre-mature.

18. It is evident that where there exists an arbitration clause and in the event any dispute has arisen between the parties, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties. In this regard, reference can be made to the decisions of the Supreme Court 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, In re* ⁴.

19. Since a dispute has arisen between the parties which is amenable to be adjudicated under Clause 11.7 of the Service Agreement, Therefore, the Court while reserving all submissions and objections of the parties, deems it appropriate to appoint Mr. Raghav Bhatia, Advocate (Mobile No.9711745654 email raghavkbhatia@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

20. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the A&C Act.

¹ (2020) 20 SCC 760.

² (2017) 8 SCC 377.



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21. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
22. The parties shall share the arbitrator's fee and arbitral cost, equally.
23. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.
24. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.
25. Accordingly, the instant petition stands disposed of.

MARCH 26, 2025
Nc/@m

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any

³ 2019 SCC OnLine SC 547.

⁴ 2023 SCC OnLine SC 1666.