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

+ O.M.P. (T) (COMM.) 103/2021

CENTRE FOR DEVELOPMENT
OF TELEMATICS

..... Petitioner

Through: Mr. Gaurav Sarin and Mr.
Sandeep Chatterjee, Advocates with Ms.
Akshita, Legal Associate

versus

XALTED INFORMATION
SYSTEMS PVT LTD

..... Respondent

Through: Attendance not given

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

% **25.10.2021**

C .HARI SHANKAR, J.

O.M.P. (T) (COMM.) 103/2021 & I.A. 13223/2021

1. The disputes between the parties were being arbitrated by Hon'ble Mr. Justice Anil Kumar, a learned retired Judge of this Court, who, unfortunately, expired during the currency of the Covid 2019 pandemic.

2. As such, the present has been moved for appointment of a substitute arbitrator to complete the proceedings.

3. Arbitral fees were required, as per the order dated 30th March,

2016, in appointing Hon'ble Mr. Justice Anil Kumar as the Arbitrator, to be paid in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996 ("1996 Act"). Learned counsel for the parties submit that the arguments before Hon'ble Mr. Justice Anil Kumar had concluded and the award was reserved when, unfortunately, he expired. As such, they submit that the arbitration is nearing its conclusion.

4. They further submit that the entire fees payable under the 7th to the 1996 Act already stands paid to Hon'ble Mr. Justice Anil Kumar and request, therefore, that this Court may fix a reasonable amount as the fees payable to the substitute arbitrator. It is also requested that the substitute arbitrator may be conversant with the e-technology, as the issues in controversies are of that nature.

5. Mr. Sarin, learned counsel for the petitioner, has also invited my attention to an order dated 28th July, 2021 passed by a coordinate Bench of this Court in OMP(T)(COMM) 67/2021. In that case, too, the arbitration proceedings were being conducted before Hon'ble Mr. Justice Anil Kumar. The appointment of Hon'ble Mr. Justice Anil Kumar in that case was under the aegis of the Delhi International Arbitration Centre (DIAC). In that case, too, the entire fees payable as per the schedule of the DIAC had been paid to the learned arbitrator, well before his demise. The Court, in the circumstances, directed to appoint substitute arbitrator, who is another learned retired Judge of this Court, to be entitled to 40% of the fees payable as per the Fourth Schedule to the 1996 Act.

6. Following the said example, I request Hon'ble Mr. Justice Badar Durrez Ahmed, an eminent retired Chief Justice of the High Court of Jammu and Kashmir, who has also adorned the Bench of this Court, to continue and complete the arbitral proceedings between the parties.

7. The learned arbitrator is requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

8. The learned arbitrator would be entitled to 40% of the fees payable as per the Fourth Schedule to the 1996 Act.

9. I am also informed that the mandate of the earlier Arbitral Tribunal had expired on 31st July, 2021. The mandate of the learned Arbitral Tribunal as constituted by the order passed today would stand extended as jointly requested by the learned counsel for the parties by a period of nine months from today.

10. With the aforesaid directions, this petition stands disposed of.

11. Miscellaneous application stands also disposed of.

C.HARI SHANKAR, J

OCTOBER 25, 2021

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