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

% *Date of Judgment: 11th January, 2021*

+ **ARB.P. 45/2021 & I.A. 343/2021**

SIDDHAST INTELLECTUAL PROPERTY
INNOVATIONS PVT LTD

..... Petitioner

Through: Mr Anukul Raj, Ms Nikita Raj
and Mr Diwakar Goel,
Advocates.

versus

THE CONTROLLER GENERAL OF PATENTS
DESIGNS TRADEMARKS (CGPDTM) Respondent

Through: Mr Praveen Kumar Jain,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. Issue notice. Mr Jain, learned counsel accepts notice on behalf of the respondent.
2. The petitioner has filed the present petition, *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of a contract between the parties.
3. The respondent (Controller General of Patents, Designs and Trademarks, through Ministry of Commerce and Industry,

Government of India) had issued a Request for Proposal (RFP) on 23.11.2012 inviting proposals for providing access to patent database and development of customized Integrated Search Platform (ISP), termed as IPATS. Pursuant to the RFP, the petitioner submitted its proposal, which was examined by a committee constituted for the said purpose. The said committee in its report, accepted the petitioner's proposal and the petitioner was declared as a successful bidder. This was communicated to the petitioner by a letter dated 29.01.2013 and the work order was placed on it. In terms of the work order, the petitioner was required to complete the works, which are set out below:-

- “a. Providing access to patent database covering the records of all countries/intergovernmental organisations mentioned in the PCT Minimum Documentation under Rule 34.1 of Regulations under the PCT, along with a search platform(s) for PL and NPL and the related interface(s) within one month from the date of award of contract and in any case providing an Integrated Search Platform (ISP) and the related interface for information retrieval through multiple databases, websites and information systems covering both patent and non-patent literature, within three months from date of award of contract and
- b. Developing a customized ISP, termed as IPATS, as per the requirements of the Indian Patent Office (IPO), within one year from the date of award of contract, is awarded to you.”

4. Subsequently, the parties also entered into an agreement on 24.05.2013 (hereafter ‘the Contract’). The Contract includes an

arbitration clause. The same is reproduced below:-

“31. That whenever there is a dispute arising out of or in relations of the agreement, either party may notify the other party in writing of the existence of the dispute specifying in reasonable detail the nature of the dispute and the expected resolution. Upon such notification the following terms shall apply:

- (a) either party shall nominate its senior personnel (Nominated Personnel) to attempt to resolve the dispute;
- (b) the parties shall cause the Nominated Personnel to make efforts in good faith to amicably resolve the dispute; and
- (c) only if the Nominated Personnel are unable to resolve the dispute within 30 days of both parties having notified the Nominated Personnel, either party may require the dispute to be conclusively resolved by way of independent arbitration.
- (d) if any dispute or differences arises, the settlement of which is not hereinbefore provided for, the same may be referred for arbitration as per the Arbitration and Conciliation Act, 1996. The award passed in arbitration proceeding may be final and binding on the parties to this agreement.”

5. The petitioner claims that disputes have arisen in connection with the Contract and the same are liable to be referred to arbitration.

6. On 08.03.2018, the respondent had sent a letter alleging that the IPATS applications executed by it had failed to comply with the requirements. It was further alleged that the requisite test reports were unsatisfactory and the petitioner was given a final opportunity to

rectify the same. The petitioner contests the said assertions.

7. On 23.03.2018, the petitioner sent a notice through its advocate invoking the provisions of Clause 31 of the Contract and nominating one of its Directors, Taru Nagauri, as its nominee for an amicable resolution of the disputes. The petitioner also called upon the respondent to nominate its representative for the aforesaid purpose.

8. Pursuant to the aforesaid request, a committee was constituted of the senior representatives of the respective parties to resolve the disputes amicably. On 11.05.2018, a notice was issued informing the petitioner that the first meeting of the said committee would be held on 08.06.2018.

9. Although the committee had held a few meetings, it is apparent the said disputes were not resolved.

10. On 04.04.2019, the petitioner sent another letter invoking the arbitration clause. The respondent responded to the said notice by alleging that the petitioner was not keen to resolve the disputes. It had quit the resolution process and thus breached the agreement.

11. The petitioner sent another letter dated 18.04.2019, once again setting out its claims and invoking the arbitration clause.

12. On 11.01.2020, the petitioner issued a formal notice for referring the disputes to arbitration. The petitioner claimed that a sum of 13,82,570 USD along with interest @ 18% was owed by the respondent to it. Admittedly, the respondent has not taken any steps

for constitution of an Arbitral Tribunal pursuant to the said notice. It responded by sending a letter dated 14.02.2020, once again alleging that the petitioner had quit the resolution proceedings for which the committee had been formed.

13. Mr Jain, learned counsel appearing for the respondent does not dispute the existence of the arbitration agreement or that the negotiations for an amicable resolution of the disputes have failed. He, however, opposes the present petition on the ground that this court has no jurisdiction to entertain the present petition. He contends that in terms of the Contract between the parties, the courts at Mumbai would have exclusive jurisdiction in respect of any *inter se* disputes between the parties.

14. Mr Jain referred to Clause 40 of the RFP and submitted that in terms of the said Clause, the parties had agreed that the courts at Mumbai would have exclusive jurisdiction. In addition, he submitted that the head office of the respondent was in Mumbai; the Work Order had been issued to the respondent from Mumbai; and all payments were made to the petitioner from Mumbai. He submitted that in view of the above, only the courts at Mumbai would have the jurisdiction to entertain the present application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act').

15. Admittedly, the works in terms of the Contract were executed in Delhi. There is no dispute that the Contract in question was performed in New Delhi. Further, it is also admitted that the

proceedings for amicable resolution of the disputes in terms of Clause 31 of the Contract took place in New Delhi. The learned counsel for the petitioner also pointed out that the letter dated 08.03.2018, alleging a deficiency in the performance of the Contract was issued by respondent's office at New Delhi.

16. Clause 40 of the RFP, which is relied upon on behalf of the respondent, reads as under:-

“40. Jurisdiction

The disputes, if any, arising between the successful applicant and CGPDTM shall be resolved amicably, failing which shall be referred to an Arbitrator, mutually acceptable to both parties, appointed by the CGPDTM as per the Arbitration and Conciliation Act, 1996. Alternatively, this shall be subject to the exclusive jurisdiction of courts at Mumbai.”

17. The Contract provides that the RFP and the documents are a part of the Contract. However, the said clause cannot be considered as a part of the Contract as the Contract has an exhaustive dispute resolution mechanism and does not contemplate the disputes between the parties be adjudicated in courts. Thus, the said clause which provides for adjudication of disputes by arbitration or in the alternative in courts at Mumbai, stands effectively overridden by Clause 31 of the Contract.

18. Even if it is assumed that Clause 40 of the RFP is applicable, a plain reading of the aforesaid Clause does not support the contention that the parties had agreed that the courts at Mumbai would have

exclusive jurisdiction in respect of the arbitral proceedings. The said clause indicates that the parties had agreed that the disputes would be resolved through arbitration and in the alternative, in the courts at Mumbai. The Contract entered into subsequently includes an arbitration clause as has been set out above. The said Contract does not mention that the seat of arbitration would be Mumbai or that the courts at Mumbai would have exclusive jurisdiction in respect of the arbitral proceedings.

19. Concededly, the meetings of the committee constituted to amicably resolve the disputes, in terms of clause 31 of the Contract, had taken place in Delhi. It is, thus, clear that part of the Dispute Resolution Clause (Clause 31 of the Contract) has been performed in Delhi. In view of the above, the contention that this court does not have jurisdiction to entertain the present petition is unmerited and is, accordingly, rejected.

20. Since, there is no dispute that there is an arbitration agreement between the parties to refer all disputes arising out of or in relation to the Contract dated 24.05.2013 to arbitration, this court considers it apposite to allow the present petition.

21. Accordingly, Justice Brijesh Sethi, Former Judge of Delhi of High Court of Delhi, (Mobile No.9910384669) is appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties arising out of or in relation to the Contract. This is subject to the Arbitrator making a disclosure under Section 12(1) of the Act and

not being ineligible under Section 12(5) of the Act.

22. The parties are at liberty to approach the Arbitrator for further proceedings.

23. The petition is allowed in the aforesaid terms.

JANUARY 11, 2021
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VIBHU BAKHRU, J

