

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

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Arb.P. No.94/2009 & IA No.7831/2009

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Date of decision:23.09.2009

**NATIONAL AGRICULTURAL CO-OPERATIVE
MARKETING FEDERATION OF INDIA LTD. (NAFED)....Petitioner**

Through: Mr. Anubhav Mehrotra and Ms. Jaya
Tomar, Advocate for the Petitioner.

Versus

MEGNOSTAR TELECOMMUNICATION (P) LTD. ... Respondent

Through: Mr. Shashank Deo Sudhi, Advocate for
the Respondent.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. Counsel for the Respondent seeks time to file a reply. The Respondent had been avoiding service of the notice of the petition. On 11th September, 2009, the respondent was found to be a petitioner in another case listed before this Court. It was found that the address given by the respondent herein as petitioner in arbitration application 12/2009 was the same as given of the respondent in these proceedings. However, the notices issued at the same address in these proceedings were being returned with the endorsement that the respondent company had shifted without address and does not exist. In these circumstances, the counsel for the respondent appearing in arbitration application number 12/2009 was made to accept the service on behalf of the respondent and only one week was given for filing reply and matter listed today. In the

aforesaid circumstances, no ground is found to grant any further opportunity to the respondent.

2. The counsel for respondent next contends that Arbitration proceedings are already going on before the Indian Council of Arbitration and the present petition is mis-conceived. In this regard, it may be stated that the petitioner had earlier approached this Court for appointment of an arbitrator in Arbitration Application No. 146/2008. However, finding that the arbitration clause between the parties was of arbitration of Indian Council of Arbitration, New Delhi, that petition was disposed of on 1st August, 2008 giving liberty to the petitioner to approach the Indian Council of Arbitration. The petitioner approached the Indian Council of Arbitration which issued notice to the respondent. The respondent, however, vide advocate's letter dated 26th December, 2008 to the Indian Council of Arbitration stated that since arbitration was agreed only of disputes which parties were unable to mutually resolve the arbitration before the Indian Council of Arbitration was not maintainable without such disputes being listed out. The respondent, thus, refused to participate in the arbitration before the Indian Council of Arbitration. The Indian Council of Arbitration resultantly asked the petitioner to pay the respondent's share of fee also.

3. The aforesaid led to the petitioner filing the present petition. The petitioner is a national level co-operative society under the Multi State Co-operative Societies Act. It is, inter alia the case of the petitioner that it had rendered financial assistance to the respondent and more than Rs. 30 crores are due from the respondent to the petitioner. The petitioner's grievance is that as per the rules of Indian Council of Arbitration, the fee to be deposited by each of the

parties is Rs. 10,70,250/- and upon the refusal of the respondent to participate in the said proceedings, the Petitioner will have to suffer the burden of paying the fee of over Rs. 20 lacs while its dues against the respondent are still held up. The Indian Council of Arbitration has in the meanwhile written to the petitioner that since the fee has not been paid they were unable to keep the matter in abeyance and would proceed to close the matter. The petitioner has filed I.A. No. 7831/2009 to stay the said letter of the Indian Council of Arbitration.

4. The respondent in the present case is found to be indulging in dilatory tactics while holding up public dues. The counsel for the respondent states that interim order securing payment have been made in the OMP preferred by the petitioner u/S 9 of the Arbitration Act. However, that does not resolve the matter and the same cannot be a substitute for arbitration.

5. Accordingly, this petition is disposed of with directions to the respondent to within six weeks, pay its share of fee to the Indian Council of Arbitration.

6. As far as the plea of the respondent of not participating in arbitration for the reason of preceeding step of amicably resolving the disputes having not been taken and disputes remaining unresolved is concerned, no merit is found therein. From what has transpired till now, there does not appear to be any likelihood of amicable resolution. The plaintiff has already preferred its claims and the disputes are evident therefrom.

7. It is further clarified that if the respondent fails to comply with the directions of this Court, besides respondent becoming liable for the same, the petitioner shall also become entitled to seek appointment of a sole arbitrator.

**RAJIV SAHAI ENDLAW
(JUDGE)**

September 23, 2009
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