

\$~33

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

+ LPA 289/2016 & C.Ms.No.17211-12/2016

BHARAT SANCHAR NIGAM LTD Appellant
Through: Mr.Ajay Kumar with Mr.Kumar
Suman, Advs.

Versus

SHREETRON INDIA LTD & ANR Respondents
Through: Mr.Davinder N.Grover with
Ms.Anamika Saraff, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.05.2016**

CM No.17213/2016 (exemption)

Allowed, subject to all just exceptions.

CM No.17214/2016 (delay in re-filing)

Under the facts and circumstances explained in the application, the delay in re-filing is condoned and the application is disposed of.

LPA 289/2016

1. By the order under appeal, the learned Single Judge directed to re-number W.P.(C) No.7450/2012 as a petition under Section 34 of the Arbitration and Conciliation Act, 1996 and list before the roster Bench.
2. Pursuant thereto, OMP No.6/2016 under Section 34 of the Arbitration and Conciliation Act, 1996 has already been numbered and is pending before this Court.
3. The present appeal has been filed by the writ petitioner/BSNL contending *inter alia* that the writ petition under Article 226 of the

Constitution of India is maintainable against an appellate award passed under Permanent Machinery of Arbitration (PMA) and in fact the preliminary objection raised by the respondents as to the maintainability of the writ petition was rejected by this Court long back on 11.12.2012. It is also contended that having directed to re-number the writ petition as a petition under Section 34 of the Arbitration and Conciliation Act, the learned Single Judge should not have left open the issue of maintainability of the said petition.

4. As could be seen, the learned Single Judge placed reliance upon ***Kandla Port Trust Vs. PEC Limited, W.Ps.(C) No.7887/2011, 7898/2011*** and ***Ircon International Ltd. Vs. National Building Construction Corporation Limited, 155 (2008) DLT 2261(D.B.)***, wherein it was held by this Court that PMA is essentially an arbitration and insofar as it excludes the Arbitration and Conciliation Act, it is void. However, the learned counsel for the appellant states that the Supreme Court is seized of the said issue and the matters are yet to be heard.

5. We do not think it necessary to go into the said issue in the present appeal since the learned counsel for the respondent No.1 has not disputed before us that a petition under Section 34 of the Arbitration and Conciliation Act, 1996 against an appellate award is maintainable. However, the learned counsel for the respondent contends that in the facts and circumstance of the case, in particular, on the ground of limitation, the petition under Section 34 of the Arbitration and Conciliation Act, 1996 is liable to be dismissed in *limine*.

6. In these circumstances, the appeal is disposed of making it clear that OMP No.6/2016, i.e., the petition that has been re-numbered under Section 34 of the Arbitration and Conciliation Act, 1996 is maintainable under law. However, the respondents are at liberty to raise the other objections, if any, on facts of the case.

7. The appeal is accordingly disposed of.

CHIEF JUSTICE

JAYANT NATH, J

MAY 09, 2016/pmc