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

+ ARB.P. 401/2016 & IA No.11665/2016

VAS INDIA COMMUNICATIONS PRIVATE
LIMITED

..... Petitioner

Through: Mr Tarun Sharma with Ms Akanksha
Kapoor and Ms Sabhyata Sharma,
Advocates.

versus

TELENOR (INDIA) COMMUNICATIONS PVT. LTD.

..... Respondent

Through: Mr Shailesh Kapoor, Ms Suruchi
Thapar and Mr Ajay Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.11.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter 'the Act') praying that a Sole Arbitrator be appointed for adjudication of the disputes that have arisen between the petitioner and respondent (hereafter 'Telenor') in relation to the Tripartite Services Agreement dated 19.03.2014 (hereafter 'the Services Agreement') entered into between them along with Unitech Wireless (Tamil Nadu) Private Limited and subsequently extended by two agreements dated 22.07.2014 and 04.05.2015.

2. Telenor seriously disputes the validity of the said agreements as it is, *inter alia*, contended that the said agreements had been obtained

fraudulently. In addition, Telenor states that the petitioner and Telenor had entered into an agreement captioned “Agreement on Responsible Business Conduct” on 06.09.2012 (re-signed on 01.06.2013) and it is the petitioner who is in breach of the terms agreed therein. The Services Agreement includes an arbitration clause, which reads as under:-

“16.7 Dispute Resolution

- (a) Any dispute arising out of or in connection with this Agreement (a “**Dispute**”) shall be referred, in writing, by either Party first to:
 - (i) In the case of the Telewings, the Manager – Marketing VAS; and
 - (ii) In the case of the Service Provider Manager – Marketing, for resolution.
- (b) If the Dispute cannot be resolved by the persons referred to in Sub-Clause (a) within 14 days from the date of reference in (a) above, either Party may give written notice to the other Party that a Dispute has arisen. Within seven days after the date of the notice, the Dispute shall be referred to the Asst. General Manager of the Service Provider and to the Head VAS Marketing of the Telewings for resolution. If the Dispute is not resolved by agreement in writing between the Parties within 14 days after the date of the notice, the Dispute shall be resolved in accordance with the remaining provisions of this Clause 16.7.
- (c) The Dispute shall be referred to a tribunal of three arbitrators which shall be constituted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. However, the Parties may if they deem fit, mutually decide to refer the Dispute to a sole arbitrator given the nature and dimension of the Dispute.
- (c) The Parties agree that the arbitration shall be governed

- by the (Indian) Arbitration and Conciliation Act, 1996.
- (d) The place of the arbitration shall be Delhi.
 - (e) The proceedings of arbitration shall be in the English language.
 - (f) The arbitrator's award shall be substantiated in writing. The arbitrator/arbitral tribunals shall also decide on the costs of the arbitration proceedings.
 - (g) The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law.
 - (h) Notwithstanding this Clause 16.7, either Party shall be entitled to obtain any interlocutory relief including injunctive relief through any court of competent jurisdiction, restraining any breach or apprehended breach in accordance with the terms of this Agreement without the necessity of establishing any actual damage."

3. The Agreement on Responsible Business Conduct also includes an arbitration clause, which reads as under:-

"19. ARBITRATION

19.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof shall, except for any action or proceeding seeking a temporary restraining order injunction relating to this Agreement, be exclusively and finally settled by arbitration in accordance with the arbitration rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

19.2 The arbitral tribunal shall be composed of three (3) arbitrators who are knowledgeable in international guidelines relating to responsible business conduct. Each Party hereto shall, within three weeks from the date the dispute was submitted for arbitration appoint one arbitrator and, once both

arbitrators are appointed, the two arbitrators shall appoint the third arbitrator who will chair the proceedings. If either of the Parties hereto fails to appoint an arbitrator within the applicable time period, or if the two appointed arbitrators do not reach agreement on whom to appoint as the third arbitrator, such appointment shall be made by the International Chamber of Commerce (ICC) in Stockholm, Sweden.

19.3 All notices of arbitration, statements of claims, statements of defences, further written statements and any other similar pleadings, and any amendments thereto, shall be in the English language. The arbitration proceedings shall be conducted in the English language and shall take place in Stockholm, Sweden.

19.4 Telenor ASA shall be entitled to assist the Purchaser in its handling of any dispute, controversy or claim arising out of or in connection with this Agreement and may be represented with legal advisers at any stage of the dispute and/or proceedings of its own choice at its own expense.

19.5 Unless otherwise determined by the Purchaser, any dispute, controversy or claim relating to an Effective Agreement (“Main Dispute”) which involves topics related to this Agreement shall not be settled by the dispute resolution body appointed under the relevant Effective Agreement before a legally binding decision on the said involved topic related to this Agreement is made by the dispute resolution body appointed herein. This provision does not apply if the dispute resolution body appointed under the relevant Effective Agreement is identical to the body appointed in this Agreement.”

4. Telenor contends that the Agreement on Responsible Business Conduct overrides the Services Agreement and, therefore, the disputes must be referred to an Arbitral Tribunal constituted in accordance with the arbitration clause as included in the Agreement on Responsible Business

Conduct. The aforesaid contention is stoutly disputed by the petitioner.

5. However, after deliberations, the parties have agreed that a singular Arbitral Tribunal may be constituted for adjudicating all disputes that have arisen between petitioner and Telenor, both in relation to the Services Agreement dated 19.03.2014 as well as the Agreement on Responsible Business Conduct dated 06.09.2012. Telenor further agreed that any reference to the “Arbitration Institute of the Stockholm Chamber of Commerce” and “International Chamber of Commerce (ICC) in Stockholm, Sweden” in clause 19 of the Agreement on Responsible Business Conduct be read as Delhi International Arbitration Centre (DIAC). Telenor is also agreeable that the place of arbitration be New Delhi.

6. The petitioner has already nominated Justice K. Ramamoorthy (Retired), a former Judge of this Court as its nominee Arbitrator. Telenor will also nominate its Arbitrator within a period of two weeks from today. Both the Arbitrators so appointed shall jointly nominate the third Arbitrator within a period of two weeks thereafter. The Arbitral Tribunal so constituted shall decide all disputes between petitioner and Telenor, both in relation to the Agreement on Responsible Business Conduct dated 19.03.2014 as well as the Services Agreement dated 06.09.2012. The arbitration shall be held under the aegis of DIAC and in accordance with its Rules. In the event, the two Arbitrators appointed by the parties are unable to agree on the appointment of the third Arbitrator, the third Arbitrator shall be appointed in accordance with the Rules of DIAC.

7. The representatives of the petitioner and Telenor are directed to

appear before the Coordinator, DIAC at 11.00 AM on 23.11.2016 for further proceedings.

8. The petition is disposed of with the aforesaid directions. Pending application also stands disposed of.

9. *Dasti.*

VIBHU BAKHRU, J

NOVEMBER 03, 2016
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