

\$~7 & 32

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

+ ARB.P. 415/2016

TELECARE NETWORK INDIA PRIVATE LIMITED Petitioner

Through Mr.Jayant K. Mehta, Adv. with
Mr.Ashok Aggarwal, Adv. with
Mr.Jayant Mehta, Mr.Parvez Alam
Khan & Mr.Shubham Agarwal, Adv.

versus

AXOM COMMUNICATIONS AND CABLE PRIVATE LIMITED

..... Respondent

Through Mr.Mohit Kr. Shah, Adv. with
Mr.Rituraj Biswas & Mr.Chandan
Kumar, Advs.

+ O.M.P. (I) (COMM.) 257/2016, I.A. Nos.10814/2016 & 10815/2016

TELECARE NETWORK INDIA PRIVATE LIMITED Petitioner

Through Mr.Jayant K. Mehta, Adv. with
Mr.Ashok Aggarwal, Adv. with
Mr.Jayant Mehta, Mr.Parvez Alam
Khan & Mr.Shubham Agarwal, Adv.

versus

AXOM COMMUNICATIONS AND CABLE PRIVATE LIMITED

..... Respondent

Through Mr.Mohit Kr. Shah, Adv. with
Mr.Rituraj Biswas & Mr.Chandan
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

%

02.09.2016

Admittedly, the disputes have arisen between the parties. Respondent is served. Learned counsel for the respondent has no objection if the prayer made in the petition, i.e. Arb. P. No.415/2016 is allowed. With the consent of the parties, Justice A.K. Patnaik, Retired Judge of the Supreme Court (Mobile No.8800381113) is appointed as sole Arbitrator to adjudicate the disputes arising between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the schedule of the amended Act. The parties to appear before the Arbitrator on 22nd September, 2016 at 4.00 p.m. for directions.

As far as O.M.P. (I) (COMM.) No.257/2016 is concerned, the ad-interim order was passed on 3rd June, 2016 against the respondent restraining it from alienating its assets to any third party. It was clarified that in case the respondent intends to dispose of the assets, it would secure a sum of Rs.5,87,12,746 in non-lien account in a Nationalized Bank and inform the Court in advance. Learned counsel for the respondent states that so far the amount has not been secured, rather the respondent has filed an application for vacation of the said order. Since the Arbitral Tribunal has been constituted, both the parties agreed about the mandate of sub-Section (3) of Section 9 of the Arbitration and Conciliation Act, 1996 which says that, *“once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”* The said circumstances of condition are not

available, as the Arbitral Tribunal is competent to decide the application under Section 17 of the Act. Both the parties agree that the present Section 9 petition be treated as an application under Section 17 of the Act and the application for vacation of the interim order be treated as reply to Section 17 application by the learned Arbitrator. Ordered accordingly.

The petitioner to file the copies of pleadings before the Arbitrator within two weeks. As agreed, two weeks further time is granted to the respondent to file an additional affidavit. The petitioner is also allowed to file the rejoinder to the reply/application for vacation of the interim order as well as response to the additional affidavit as and when filed by the respondent, within three weeks thereafter.

Learned counsel for the respondent has no objection if the interim order dated 3rd June, 2016 shall continue till the same is modified or vacated by the Arbitrator. Ordered accordingly. As agreed by both the parties, the said interim order will not come in the way of deciding the application on merits by the Arbitrator.

Both the petitions are accordingly disposed of.

Copies of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

MANMOHAN SINGH, J.

SEPTEMBER 02, 2016/ka