

\$~8

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

+ O.M.P.(I) (COMM.) 486/2016

M/S. UNITED TELECOMS LIMITED Petitioner

Through: Mr Parag P. Tripathi, Senior
Advocate with Mr Pragyan Sharma,
Mr S. Sastry, Mr Shikhar Garg and
Mr Ganesh Bapu, Advocates.

versus

M/S. BHARAT BROADBAND NETWORK
& ORS.

..... Respondents

Through: Mr Atul Bandhu and Mr Varun
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 24.12.2016

1. This is a petition filed on behalf of the petitioner, *inter alia*, praying as under:-

“a) restrain the Respondent No.1 from invoking and/or encashing the Bank Guarantees bearing (i) PBG No. 10460000614 dated 03.06.2014 for an amount of Rs.12 Crores issued by Oriental Bank of Commerce, MG Road, Bangalore; (ii) PBG No. 2014BG135 dated 02.06.2014 for an amount of Rs.6.47 Crores issued by Canara Bank, Prime Corporate Office, Bangalore and (iii) PBG No.1403771BGP00491 dated 03.08.2014 issued by IDBI Bank Ltd., Bangaluru for an amount of Rs. 1 Crores till further Orders from.

b) award cost of the proceedings;”

2. The learned counsel appearing for the respondents states that the bank guarantees were invoked prior to the petitioner filing the present petition and the money has since been received.
3. At this stage, Mr Tripathi, learned senior counsel appearing for the petitioner submits that the petitioner will invoke the arbitration clause and the letter requesting for appointment of an arbitrator will be sent by 26.12.2016. He has drawn the attention of this Court to the arbitration clause, which is set out below:-

“III. 20. ARBITRATION

- III. 20.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BBNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BBNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government

Servant/ PSU Employee he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BBNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

III. 20.2 The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

III. 20.3 The venue of the arbitration proceeding shall be the office of the CMD, BBNL, New Delhi or such other places as the arbitrator may decide.”

4. In terms of the said clause, an Arbitrator is required to be appointed by the CMD of the respondent no. 1. The learned counsel for the respondents states that within 07 days on the receipt of the letter, the CMD of the respondent no. 1 will appoint an independent Arbitrator. It is so directed.

5. In view of the respondents' statement that the aforementioned bank guarantees have been encashed, the relief as prayed for in this petition cannot be granted. The petition is, accordingly, disposed of. However, this

will not preclude the petitioner from approaching the Arbitral Tribunal, as and when constituted for appropriate relief including seeking deposit of the money received by the respondent no. 1. Needless to mention, the same shall be considered and decided in accordance with law.

6. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

DECEMBER 24, 2016
MK