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

+ **ARB.P. 139/2017**

GTL INFRASTRUCTURE LTD.

..... Petitioner

Through Mr Sandeep Sethi, Senior Advocate with
Ms Shyel Trehan, Mr Harikrishana Pramod and
Mr Nikhil Ratti Kapoor, Advocates.

versus

VIDEOCON TELECOMMUNICATIONS LTD. Respondent

Through Mr Akhil Sibal, Mr Soomik Ghosal, Mr
Yashvardhan & Mr Devender Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.03.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, (hereafter 'the Act') *inter alia*, praying that an arbitral tribunal be constituted to adjudicate the disputes that have arisen between the petitioner and the respondent in connection with the Master Service Agreement dated 30.10.2009. The said agreement contains an arbitration clause which is set out below:-

“22.8 DISPUTE RESOLUTION:

In the event that any dispute arises between the Parties in connection with this Agreement, the construction of any provision of this Agreement or the rights, duties or liabilities of the Parties hereto under this Agreement, the Parties shall conduct negotiations in good faith to

solve such dispute. If mutual resolution cannot be reached within thirty (30) days after the commencement of such negotiations, either of the Parties shall be free to refer such dispute to arbitration under the Arbitration and Conciliation Act, 1996 (any amendment or any enactment therein and rules there under) by three (3) arbitrators. One arbitrator shall be appointed by each Party and the third arbitrator shall be appointed by the arbitrators so appointed. The venue of arbitration shall be New Delhi. The arbitration proceedings shall be conducted in English. Any award made in such arbitration will be final and binding on the Parties. During pendency of any arbitration proceedings, performance of the Services and all other obligations under this Agreement or any Service Order(s) by Infrastructure Provider shall continue uninterrupted.”

2. Learned counsel appearing for the respondent does not dispute the existence of the arbitration clause. However, he submits that in view of the express provisions of the Telecom Regulatory Authority of India Act, 1997, all disputes between the parties are required to be settled by the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

3. Mr Sethi, learned counsel appearing for the petitioner points out that the said question is no longer *res integra* as the same has been considered and decided by a coordinate bench of this Court in **Viom Network Ltd & Anr. v S. Tel Pvt. Ltd. & Anr.**: 2013 (139) DRJ 641.

4. Concededly, the petitioner therein was similarly placed as the petitioner in the present petition and court had held that the petitioner there was not a service provider within the meaning of Section 2 (1) (j) of the

TRAI Act. However, the learned counsel for the respondent submits that the issue is not finally settled as yet because an appeal is pending against the said decision before the Division bench of this court.

5. Be that as it may, the decision of ***Viom Network Ltd & Anr.*** (*supra*) has also been followed by another coordinate bench of this court in ***Indus Towers Limited v. Videocon Telecommunications Limited Formerly Known as Datacom Solutions Ltd***: 2016 SCC OnLine Del 5238, ***ATC Telecom Tower Corporation Pvt. Ltd v. Videocon Telecommunications Ltd.***: 2016 SCC OnLine Del 5237, ***Tower Vision India Private Limited v. Videocon Telecommunications Limited***: 2016 SCC OnLine Del 5273 and ***Viom Networks Limited v. Videocon Telecommunications Limited***: 2016 SCC OnLine Del 5275 and the said view is a binding precedent.

6. In view of the above, it is not necessary to consider the said issue once again.

7. It is not disputed that by a letter dated 05.11.2016, the petitioner had invoked the arbitration clause for appointing Justice A.P. Shah (Retired), former Chief Justice of this court, as an arbitrator. The respondent has, admittedly, failed to nominate its arbitrator. Accordingly, Justice R.V Easwar (Retired), former judge of this court (Mobile No: +91 9560899997) is appointed as a nominee on behalf of the respondent. The arbitrators shall jointly concur with appointment of the presiding arbitrator. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The parties are at liberty to approach the arbitrators for further proceedings. The arbitrators

shall take a decision as to the appointment of the presiding arbitrator as expeditiously as possible, preferably within a period of three weeks from today.

8. The petition is, accordingly, disposed of.

VIBHU BAKHRU, J

MARCH 22, 2017

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