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

+ **ARB.P. 136/2017**

CHENNAI NETWORK 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

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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 09.09.2009. The said agreement contains an arbitration clause which is set out below:-

“15. DISPUTE RESOLUTION AND JURISDICTION

If any dispute or difference arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, termination, or alleged breach of any provision of this Agreement the Parties shall endeavour to settle such dispute or difference amicably.

15.1 In case the same is not settled as above then any dispute, disagreement or controversy between Parties arising out of or in connection with this Agreement or breach thereof or relating to it's construction or performance shall be submitted for arbitration in accordance with the Arbitration and Conciliation Act, 1996. All arbitration proceedings shall be conducted in the English language. For the purpose of such arbitration, it shall be conducted by a sole arbitrator (the "Arbitral Tribunal") to be mutually appointed by both the parties. If the Parties shall not agree on a sole arbitrator, then each Party shall nominate an arbitrator, and the two arbitrators shall nominate the arbitrator that shall preside over the arbitration procedures.

15.2 The award of the Arbitral Tribunal shall be final and binding on Parties.

15.3 Arbitration shall be held in Delhi. Each Party shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced under this Agreement.

15.4 The costs and expenses of the arbitration, including, without limitation, the fees of the arbitrator, and including, without limitation, the fees of the Arbitral Tribunal, shall be borne by either or both the parties as may be determined by the Arbitral Tribunal.

15.5 During the pendency of any arbitration proceedings, performance of the Services and all other obligations under this Agreement or any Service Order(s) by either Party shall continue uninterrupted in respect of the Sites which are not part of the arbitral proceedings."

2. The 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 section 14 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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