

\$~24

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

+ CM(M) 364/2017

JEEVAN TELECASTING CORPORATION LTD Petitioner
Through: Mr.Hiresh Chaudhary, Advocate.

versus

ASIANET SATELLITE COMMUNICATIONS LTD Respondent
Through: Mr.Shirin Khajuria and Ms.Savita
Sinha, Advocates.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
% **17.05.2017**

CM(M) 364/2017

1. The petitioner has invoked the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India with the following prayers:-

(i) to set aside the impugned orders dated 22.08.2016, 15.09.2016, 27.10.2016, 03.11.2016, 06.12.2016, 21.12.2016, 03.01.2017, 02.02.2017 and 22.02.2017 and refer the disputes between the parties, presently pending before the Hon'ble TDSAT in Broadcasting Petition No.391/2016 to Arbitration;

(ii) in the alternative, direct the Hon'ble TDSAT to consider and decide the jurisdiction objection raised by the petitioner herein in Broadcasting Petition No.391/2016, prior to proceeding any further with the trial.

2. Written submissions have already been filed by the respondent. Petitioner has filed the written submissions today in the Court.

3. Learned counsel for the petitioner has submitted that the learned TDSAT has been proceeding with that matter without deciding that the matter needs to be referred to the Arbitrator.

4. Learned counsel for the respondent has submitted that in this case the petitioner had not filed any application under Section 8 of Arbitration and Conciliation Act, 1996. He has further submitted that this fact is clear even from the fact that the copy of any such application under Section 8 of the Arbitration and Conciliation Act, 1996 has not even been annexed with this petition.

5. Learned counsel for the petitioner has been repeatedly requested to show on which date the application under Section 8 of Arbitration and Conciliation Act, 1996 has been filed before the learned TDSAT and to place on record the copy of such application. But no such application has been annexed with the petition or copy thereof now shown to the Court.

6. In the decision of High Court of Bombay (Nagpur Bench) in *Ganesh Trading company, A Partnership Firm & Ors. vs. Government of Maharashtra through the Collector, Conservator of Forests, Yavatmal Division and Deputy Conservator of Forests* 2007 (4) ALLMR 191 it was held that the party seeking a reference necessarily has to make a written application under Section 8 of the Arbitration and Conciliation Act, 1996 in the absence of which the Court lacks jurisdiction to refer the dispute to the arbitration.

7. The relevant discussion appears in para 7 to 9 of the report which reads as under:

‘7. [Section 8](#) of the Arbitration Act reads thus:

8. *Power to refer parties to arbitration where there is an arbitration agreement:*

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in Sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

8. Section is very clear. The emphasis has to be laid on words "if a party so applies". These words make it very clear that a party seeking a reference to arbitration has to submit a written application. This Court in ([Garden Finance Ltd. v. Prakash Industries Ltd.](#)) observed as follows:

One of the aspects to be considered by the Court while considering the application under [Section 8\(1\)](#) of the Arbitration and [Conciliation Act](#), 1996 for referring the parties to arbitration is that the subject matter of the action is same as the subject matter of the arbitration agreement. This requirement will involve reference, to the contents of the plaint as also to the arbitration agreement and the manner in which the applicant wants the Court to read the averments made in the plaint as also the recital in the arbitration agreement. The party which seeks to refer the dispute to the arbitrator has to make a written application for that purpose so that the plaintiff, who has instituted the suit, knows exactly the grounds on which the reference is sought.

9. Thus, it is mandatory that a party, seeking reference has to make an application in writing. In the case at hand, no such application under [Section 8](#) of the Arbitration Act was ever

made. Apparently therefore court could not have made a reference and it did not get jurisdiction to make such a reference.'

8. Since there is no application under Section 8 of the Arbitration and Conciliation Act, 1996 being filed before TDSAT, the question of hearing being deferred by the TDSAT did not arise.

9. The petition is dismissed.

CM No.12797/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 17, 2017

'st'