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

\+ O.M.P.(I) (COMM.) 140/2017

ALCATEL-LUCENT INDIA LIMITED ..... Petitioner
Through Mr. Abhishek Tewari, Advocate

versus

MAHANAGAR TELEPHONE NIGAM LIMITED & ANR. ..... Respondents
Through Mr. Saket Sikri, Advocate with Mr. Deepak Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **29.03.2017**

1. Issue notice. The learned counsel for the respondent accepts notice.

2. With the consent of both the parties, the petition is taken up for final hearing.

3. The petitioner has filed the present petition under Section 9 of Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* praying as under:

> "(a) restrain the Respondent No. 1 from invoking bank guarantee no. ND/VQD/123/95 for Rs. 30,33,538 dated March 29, 1995 drawn on the Respondent No. 2 during the pendency of the present proceedings as well as those in O. M. P. (Comm.) No. 368 of 2016 before this Hon'ble Court;
>
> (b) restrain the Respondent No. 2 from paying the sum secured under bank guarantee no. ND/VQD/123/95 for Rs. 30,33,538 dated March 29, 1995 to

> Respondent No. 1 during the pendency of the present proceedings as well as those in O. M. P. (Comm.) No. 368 of 2016 before this Hon'ble Court."

4. It is not disputed that the petitioner had submitted the afore-mentioned bank guarantee (ND/VQD/123/95 dated 29th March, 1995) for a sum of ₹30,33,538/- in connection with the Purchase Order dated 31st January, 1995 for procurement of OCB-283 inter-connecting equipments for 107K lines. There is no dispute that the petitioner has performed its obligations to supply the equipment under the Purchase Order, however, certain disputes arose between the parties, which were referred to the sole Arbitrator.

5. Admittedly, the petitioner made certain claims which included claims for release of the bank guarantee; bank guarantee charges; and interest on the bank guarantee amount. The sole Arbitrator rendered the arbitral award directing release of the bank guarantee, however, petitioner's claim for bank guarantee charges with interest thereon was disallowed.

6. MTNL has preferred a petition - OMP (COMM) 368/2016 - challenging the award as rendered by the sole Arbitrator, however there is no issue as to the release of the bank guarantee. Consequently, Arbitrator's decision for releasing the bank guarantee is final. In the circumstances, there is no justifiable reason for MTNL to invoke the said subject bank guarantee at this stage. A similar question also arose in another matter, OMP (I) (COMM) 461/2016, amongst the parties and by order dated 30th November, 2016 this Court restrained MTNL

from invoking bank guarantee involved in the said mater. The learned counsel for the parties do not dispute that the same would be determinative of the controversy in the present petition also.

7. In view of the above, MTNL is restrained from invoking the bank guarantee during the pendency of the MTNL's petition under Section 34 of Arbitration and Conciliation Act, 1996, that is, OMP (COMM) 368/2016.

8. The petition is disposed of.

9. *Dasti* under the signatures of the Court Master.

VIBHU BAKHRU, J

MARCH 29, 2017
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