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

\+ **<u>ARB.P. 574/2016</u>**

ATC TELECOM INFRASTRUCTURE
PRIVATE LIMITED ..... Petitioner

Through Mr Rahul Sharma, Ms Jyoti Dutt Sharma and Mr C.K. Bhatt, Advocates.

versus

S.P.ANEJA & SONA(HUF) ..... Respondent

Through Mr J.S. Kohli, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% 14.02.2017

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia,* praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the use of the premises licensed by the respondent.

2. The petitioner has relied on the arbitration clause as set out in the leave and licence agreement dated 12.01.2004 entered into between the respondent and M/s Tata Teleservices Limited (hereafter 'TTL').

3. The learned counsel for the respondent has opposed the present petition principally for the reason that the agreement dated 12.01.2004 was entered into between the respondent and TTL and there is no agreement between the respondent and the petitioner. The learned counsel for the petitioner has countered the aforesaid submission by referring to clause 14

of the aforementioned agreement which reads as under:-

"**14 ASSIGNMENT**

14.1 It is hereby agreed by both the parties to the deed that this a transferable deed and that TTL during the period of the deed or its renewals thereof shall be entitled to make an assignment of this deed duration, transfer in whole or a portion of the Site, antennae, the Equipment subject to prior consent in writing of GRANTOR to such assignment, transfer or sub-grant. Such consent shall not be unreasonably refused or withheld by GRANTOR and in such an event, the transferee or the assignee, as the case may be, shall be bound by all the conditions set out in the deed. In the event TTL makes available the schedule premises or is desirous of making available the scheduled premises for use, to its subsidiaries, holding companies, joint venture partners or partners, any time during the term of this deed, then TTL shall not require any written consent of the GRANTOR as mentioned above and the same shall not be construed as a sub-licensing or parting with the possession of the scheduled premises in full or part, as the case may be.

14.2 Any agencies such as Financial Institution or Banks or its agents can step into the shoes of TTL on transferring of TTL's Basic Telephone Service License to such agencies and such Agencies shall be treated as Licensee for the rest of the period of this deed. The grantor shall not object or refuse such agency to operate for the rest of the period of this leave and license.

14.3. TTL shall be entitled to share in whole or in part, with any entity/company of its own choice, the scheduled premises secured by it, under this deed

> only as per mutual terms and conditions settled by TTL and Grantor."

4. The learned counsel for the petitioner states that the petitioner is a subsidiary of TTL and has acquired the telecom business, including all related assets and liabilities of TTL. He earnestly submitted that by virtue of clause 14.1 of the agreement dated 12.01.2004, the petitioner would be entitled to use the premises and would also be entitled to the benefit of the arbitration agreement.

5. A plain reading of clause 14.1 of the agreement indicates that it is in two parts. The first part relates to the right of TTL to assign the agreement. Undisputedly, TTL would be entitled to assign or transfer the agreement to any person, however, the same would require prior consent of the respondent, in writing. It was further agreed that the respondent would not unreasonably withhold or refuse the consent for TTL to assign the said agreement in favour of the third party. Any assignment of the agreement with the consent of the respondent would result in the assignee stepping into the shoes of TTL and would undisputedly be party to the agreement. However, it is not disputed that no consent of the respondent was sought for by TTL for assigning the agreement in favour of the petitioner and no such consent was granted.

6. The second part of clause 14.1 of the agreement - which was relied upon by the petitioner - entitles TTL to make available the premises to its *subsidiaries, holding companies, joint venture partners or partners.* A plain reading of the latter part of clause 14.1 indicates that although it entitles

TTL to make available the premises for use of its subsidiaries, holding companies, joint venture partners and partners during the term of the licence, it does not provide that the subsidiaries, holding companies, joint venture partners or partners of TTL would step into the shoes of TTL as a party to the leave and licence agreement or the arbitration agreement.

7. It is seen that there is a material difference between assignment of the agreement with the consent of the respondent as is contemplated in the first part of clause 14.1 and in the latter part of clause 14.1 which only entitles TTL to make available the premises for use to its related parties.

8. In the aforesaid view, there is much merit in the contention of the respondent that there is no arbitration agreement between the petitioner and the respondent. Accordingly, the petition is dismissed.

VIBHU BAKHRU, J

FEBRUARY 14, 2017
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