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

+ **OMP (COMM) 401/2016**

Date of decision: 14th November, 2017

BHARAT SANCHAR NIGAM LIMITED Petitioner

Through: Mr. Sharat Kapoor and Ms.
Tanvi Kalra, Advs

Versus

RIVACOM PVT. LTD. Respondent

Through: Mr. Nitin Mishra, Adv

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner Bharat Sanchar Nigam Limited (BSNL) challenging the award dated 29th April, 2016 of the Sole Arbitrator dismissing its counter claim on the ground that it was not "received and/or presented in sequential order and consequently in timely sequence & orders". It seems that the learned arbitrator is wanting to say is that the counter claim was not filed along with the Statement of Defence, despite the

petitioner BSNL having been given sufficient time to file the same.

2. The counsel for the petitioner submits that the first hearing before the arbitrator had taken place on 29th April, 2013. The respondent filed a Statement of Claim on 15th July, 2013. The petitioner filed its Statement of Defence on 12th February, 2014, however, inadvertently the counter claim was not filed along with the same. The counter claim was, in fact, filed only on 18th October, 2014. He submits that the counter claim was within the period of limitation. In any case, as Code of Civil Procedure, 1908 does not apply to the arbitration proceedings, there was no embargo on the counter claim having been filed separately. The proceedings were at its initial stage. He therefore, submits that no prejudice would be caused if the counter claim had been taken on record at that stage.

3. Learned counsel for the respondent submits that the counter claim should have been filed along with the Statement of Defence. The delay in filing of the counter claim has not been explained and even the issues had been framed in the proceedings held on 8th May, 2014 (though the order of that date had been deleted by mistake by the arbitrator) and formally recorded again on 29th April, 2016. He further submits that notice for raising any dispute in form of counter claim had not been served on the respondent.

4. I have heard the counsel for the parties. In my view, as the proceedings were still at an initial stage, merely because the counter claim was not filed along with the Statement of Defence, the same could not have been rejected by the arbitrator. Arbitrator, in terms of Section 19 of the Act, is not bound by the Code of Civil Procedure, 1908, however, has to act in accordance with principles of natural justice. A party cannot be shut out from raising its claim only on procedural delays.

5. As far as the issue of non-service of notice to the respondent before raising a counter claim is concerned, the same is no longer *res integra* and it has been authoritatively held by Supreme Court in ***State of Goa Vs Praveen Enterprises*** (2012) 12 SCC 581 that the object of providing for counter claims is to avoid multiplicity of proceedings and to avoid divergent findings. The arbitrator will have jurisdiction to entertain any counter claim, even though it was not raised at a stage earlier to the stage of pleadings before the arbitrator.

6. In view of the above, I find no merit in the submission made by the counsel for the respondents that the petitioner was not entitled to raise a counter claim merely because there was no prior notice given by him before filing the same.

7. The counsel for the respondent, however, relying on the judgment of the Supreme Court in ***Voltas Ltd. Vs Rolta India Ltd.*** (2014) 4 SCC 516 has submitted that this would still leave

the issue of limitation in filing of counter claim being considered by the arbitrator. I may only clarify that I have not made any comment on whether the counter claim was filed within the period of limitation or not. This will be an issue which will be decided by the arbitrator keeping in mind the totality of facts placed before him.

8. In view of the above, the petition is allowed. The impugned award dated 29th April, 2016, in so far as it rejected the counter claim of the petitioner BSNL, is set aside and the counter claim is directed to be taken on record before the arbitrator to be adjudicated on its merit, subject to other objections by the Respondent. There shall be no order as to costs.

9. The parties submit that there is no date fixed before the arbitrator for conduct of the proceedings and they will be jointly requesting the arbitrator to fix the next date of hearing in the proceedings.

NAVIN CHAWLA, J

NOVEMBER 14, 2017/NK