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

+ **ARB.P. 297/2017**

BHARTI INFRATEL LTD Petitioner

Through: Mr. P.S. Bindra, Advocate

versus

VIDEOCON TELECOMMUNICATIONS
LIMITED

..... Respondent

Through: Mr. Yashvardhan, Mr. Soumik
Ghosal and Mr. Devender Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

31.05.2017

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1. This petition is filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* praying that an arbitrator be appointed on behalf of the respondent in terms of the arbitration clause as contained in the Master Service Agreement dated 24.12.2009.

2. There is no dispute as to the said clause, however, according to the respondent, the arbitration agreement would stand superseded by the statutory provisions of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act). The said issue has already been considered by a coordinate Bench of this Court in ***Viom Network Ltd. v. S. Tel Pvt. Ltd.: 2013 (139) DRJ 641***. The learned counsel for the respondent does not dispute that the said decision would be applicable to the facts in the present case. He, however, submits that the view taken in that matter is subject matter of an

appeal pending before the Division Bench of this Court (FAO No. 30/2014).

3. It is also not disputed that the petitioner has invoked the arbitrator clause by letter dated 24.01.2017 which was followed by an e-mail also dated 24.01.2017. Thereafter, the petitioner caused yet another notice to be served on 24.03.2017.

4. Notwithstanding that an appeal is pending before the Division Bench, this Court would be bound by the decision of the coordinate Bench and therefore, the present application is liable to be allowed and it is necessary that an arbitral tribunal be constituted.

5. The petitioner has already nominated its arbitrator, however, the respondent has failed to do so.

6. Therefore, Justice R.V. Easwar (Retd.) (Mobile No. 9560899997), former Judge of this court is appointed as an 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. Both the arbitrators shall concur on appointment of the third arbitrator in terms of the arbitration clause. It is clarified that in the event the arbitrators are unable to concur on appointment of the third arbitrator, the petitioner would be at liberty to apply afresh.

7. The learned counsel for the respondent further submits that parties are still endeavouring to resolve the dispute and requests that parties be given further time to resolve the disputes amicably.

8. Under the circumstances, it is directed that arbitral tribunal shall not

enter reference for a period of eight weeks from today. In the meanwhile, the parties shall make efforts to resolve the disputes amicably. If the parties are able to do so, they shall communicate the same to the arbitral tribunal and no further steps would be required to be taken by the tribunal. However, if the parties are unable to resolve the dispute, they shall proceed with the arbitration as directed.

9. The petition is disposed of accordingly.

MAY 31, 2017

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VIBHU BAKHRU, J