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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB. A. (COMM.) 34/2016

TIMES INTERNET LIMITED

..... Appellant

Through: Mr. Kunal Tandon, Ms. Snigdha
Sharma, Advocates.

versus

BHARAT SANCHAR NIGAM LIMITED

..... Respondent

Through: Mr. P.K. Bansal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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18.01.2017

1. This order is in continuation of the previous order dated 8th December, 2016, which reads as under:

“1. Learned counsel for the Respondent informs that Mr. Chandra Prakash, Ex-Officio Secretary to the Government of India has been appointed as an Arbitrator to replace the incumbent Arbitrator.

2. On the other hand, learned counsel for the Petitioner produces a copy of the declaration made by Mr. Chandra Prakash dated 5th December, 2016 where *inter alia* he states that he had worked in BSNL as GM, PGM and CGM from 1st October, 2000 to 16th September, 2009.

3. Learned counsel for the Respondent states that he is not aware of the above declaration. He states that he would advise the MD, BSNL to nominate some other person who may not have any such disqualification to be an Arbitrator. He requests for two weeks' time for that purpose.

4. While granting the above request of the learned counsel for the Respondent, the Court is of the view that in any event, the impugned Award dated 22nd June, 2016 to the extent it held the arbitration clause to be illegal, invalid, unconstitutional or inconsistent with the legal framework is unsustainable in law and is, accordingly, set aside.

5. The appeal requires to be kept on board only to enable the Respondent to appoint a new Arbitrator to continue the arbitral proceedings.

6. List on 18th January, 2017.

2. Mr. P.K. Bansal, learned counsel for the Respondent produced a copy of the letter dated 17th January 2017, addressed to him by the Respondent, conveying the appointment of Mr. T.N. Tiwari, former Additional Secretary Law & Justice as sole Arbitrator. He further states that Mr. Tiwari is making necessary declarations in terms of Section 12 of the Act as amended with effect from 23rd October, 2015 before proceeding with the arbitration which will start *de novo* before him.

3. The parties will appear before Mr. Tiwari on 27th February, 2017 at 4 pm, subject to his changing the said date with one week's advance intimation to both the parties. The venue of the first meeting will be organized by the Respondent and communicated to the Petitioner as well as learned Arbitrator at least ten days in advance.

4. The impugned Award dated 22nd June, 2016 to the extent it stays the encashment of the bank guarantee (BG), is directed to continue. Learned

counsel for the Respondent states that till such time the learned Arbitrator passes an order varying or vacating the said order in an application by the Respondent under Section 17 of the Arbitration and Conciliation Act, the BG will not be encashed. This is without prejudice to the rights and contentions of the Appellant and subject to the Appellant keeping the BG alive.

5. It will be the responsibility of the Respondent to collect the arbitral record from the previous Arbitrator and make it available forthwith to the Arbitrator now appointed.

6. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

JANUARY 18, 2017/mg