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

\+ OMP (I) (COMM.) 496/2016

BHARTI INFRATEL LIMITED ..... Petitioner

Through: Mr Sudhanshu Batra, Senior Advocate with Mr Karan Singh Chandhiok and Mr Ambanshu Sahni, Advocates.

versus

RELIANCE COMMUNICATION LIMITED & ANR. ..... Respondents

Through: Mr Meet Malhotra, Senior Advocate with Mr Chaitanya Safaya and Mr Raghav Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 01.06.2017

IA No.5162/2017

1. For the reasons stated in the application, the delay of 41 days in filing rejoinder is condoned.

2. The application is disposed of.

OMP (I) (COMM.) 496/2016

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

"a. Pass an order directing Respondents to remove all its active equipment, not limited to GSM and Microwaves, from the sites of the Petitioner, and further be restrained from alienating /encumbering/disposing of/transferring/selling or creating third party rights, directly or indirectly, on the assets so removed from the sites of the Petitioner, till the final adjudication of the proposed arbitration proceedings;\

b. Direct the Respondents to:

   i. furnish adequate security for the amount of INR 43,96,26,404, (Rupees forty-three crores, ninety-six lakhs, twenty-six thousand, four hundred and four only) exclusive of applicable taxes due by the Respondents to the Petitioner, till the final adjudication of the proposed arbitration proceedings;
   ii. alternatively, direct the Respondents to deposit INR 43,96,26,404, (Rupees forty-three crores, ninety-six lakhs, twenty-six thousand, four hundred and four only) exclusive of applicable taxes due by the Respondents to the Petitioner, with this court, till the final adjudication of the proposed arbitration proceedings;
   c. direct the respective directors of Respondents No.1 and 2 to personally ensure compliance with this Hon'ble Court's orders in respect of prayers a. and b. above.
   d. grant *ex-parte ad-interim* orders in respect of prayers a. to c. above;
   e. award costs."

4. The disputes between the parties stem from the Master Service

Agreement (hereafter 'MSA') dated 13.04.2010. The petitioner claims that in terms of the MSA, the petitioner is entitled to an 'Exit Amount', which the petitioner has quantified at Rs.39,22,48,384/-. In addition, the petitioner also claims that a sum of Rs.4,73,78,020/- as interest (as on 30.11.2016) is also due and payable by the respondent. The respondent disputes the same . It disputes the quantification of the said amount. In addition, it is the respondents case that MSA was terminated on account of a 'Force Majeure Event' and, therefore, in terms of Clause 16 of the MSA no liability could be imposed on the respondent on account of termination of the MSA. The respondent has also relied on Clause 2 of Schedule 5 to the MSA in support of his contention that either party could terminate the MSA in view of a change of law or decision of any Government Authority or a Force Majeure Event.

5. The petitioner counters the aforesaid by submitting that there is no Force Majeure Event. According to the petitioner, the question of whether there is Force Majeure Event would have to be read in context of the respondent's obligation under the MSA which in this case would be payment for passive infrastructure.

6. This Court is refraining from expressing any opinion on the aforesaid controversy in view of the fact that it is reported that an arbitral tribunal for adjudication of the subject disputes stands constituted. In the circumstances, it is directed that the present petition under Section 9 be considered by the arbitral tribunal, *albeit*, as an application under Section 17 of the Act.

7. Mr Batra, learned senior counsel points out that the respondent

companies are in the process of obtaining and implementing a scheme of arrangement whereby certain valuable assets/business of the respondent companies are being hived off and thus the assets available for enforcing a favourable arbitral award (if passed) are being denuded. He earnestly contended that the in view of the serious claims made by the petitioner, the respondent cannot be permitted to alienate its assets so as to place them outside the reach of the petitioner for enforcement of the arbitral award that may be made.

8. Mr Meet Malhotra, learned senior counsel for the respondent states on instructions that the matter regarding the scheme of arrangement is now fixed before the National Company Law Tribunal (NCLT) on 28.06.2017. He further states that there is no possibility of the scheme being sanctioned on that date as it is only listed for admission and not for passing an order. On instructions, he assures this court that the scheme of amalgamation will not be passed on that date. He also states that the arbitral tribunal is scheduled to meet on the same date, i.e. 28.06.2017.

9. Mr Malhotra, further states that the respondents shall remove their equipments from the infrastructure sites provided by the petitioner within a period of four weeks from today. He further states that the respondents shall not transfer, sell, encumber or alienate in any manner, the said assets without seeking appropriate orders from the arbitral tribunal in that regard. The respondents are bound down to the aforesaid statement.

10. In the aforesaid circumstances, it is expected that the arbitral tribunal will take up the present petition (as an application under Section 17) on an

urgent basis and pass necessary orders as considered expedient. The petitioner is also at liberty to approach the arbitral tribunal for hearing the application on an urgent basis prior to 28.06.2017.

11. The present petition is disposed of with the aforesaid observations.

12. The learned counsel for the parties shall file a record of the present petition before the arbitral tribunal as expeditiously as possible in any event no later than one week from today.

13. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JUNE 01, 2017
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