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

+ **ARB.P. 694/2017**

ATC INDIA TOWER CORPORATION PRIVATE LIMITED

..... Petitioner
Through: Mr. Shekhar Garg with Mr. Ganesh
Bapu, Advocates

versus

BHARAT SANCHAR NIGAM LIMITEID Respondent
Through: Mr. Sameer Agrawal, Advocate

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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19.12.2017

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudicating the disputes that have arisen between the parties in relation to the "Infrastructure Sharing Agreement" dated 13th February, 2008. The agreement contains an arbitration agreement between the parties in the form of Clause 24, which is reproduced here in under:

24.0 DISPUTE RESOLUTION

All the disputes, differences, controversies/differences of opinions, breaches and violation arising from or related to the agreement arises out of this Agreement between parties then same shall be resolved by mutual discussions/reconciliations in good faith. If the dispute, difference, controversies/differences of opinions, breaches and violation arising from or related to the agreement

cannot be resolved within 60(sixty) days of commencement of reconciliation/discussions, then such question dispute or difference (except as to the matters, the decision to which is specifically provided under this agreement) shall be referred to the Arbitration Tribunal under the provision of the Arbitration and Conciliation Act, 1996 and the rules made there under or any statutory modification or re-enactment there of or any rules made thereof shall be deemed to apply to the arbitration proceeding under this clause. The arbitration proceeding shall be in English language. The Venue of the arbitration proceeding shall be BSNL Corporate Office, Bharat Sanchar Bhavan, H. C. Mathur Lane, Janpath, New Delhi 110001

The petitioner had invoked the arbitration agreement between the parties vide its notice dated 11th August, 2017. The respondent, vide its letter dated 6th September, 2017 did not agree with the proposal of the petitioner forcing the petitioner to file the present petition before this Court.

The learned counsel for the respondent submits that vide its order dated 1st December, 2017, the respondent has now appointed a sole arbitrator for adjudication of the disputes that have arisen before the parties.

As the appointment of the arbitrator is after the filing of the present petition, which was filed on 26th October, 2017, I find that the respondent has lost its right to appoint an arbitrator. In any case Clause 24 of the Agreement does not give a right to the respondent to unilaterally appoint a sole arbitrator.

The learned counsel for the petitioner further submits that this purported appointment of a sole arbitrator by the respondent is even otherwise in relation to a different contract for which, in fact, there is

no dispute between the parties.

Be that as it made the existence of the arbitration agreement and the invocation thereof by the petitioner is not denied by the respondent.

In view of the above, I find no impediment in appointment of an arbitrator for adjudication of the disputes that have arisen between the parties in relation to the above mentioned Agreement.

I appoint Mr. **Ram K. Watel**, Advocate(r/o A-12, Pamposh Enclave, New Delhi-110048, Ph.26417429, 26448455) as the sole arbitrator for adjudication of the disputes that have arisen between the parties.

The Arbitrator shall submit his disclosure in terms of Section 12 of the Act before proceeding with the reference. The arbitration shall take place under the aegis of Delhi International Arbitration Centre(DIAC). The arbitration and the fee shall be governed by the rules of the DIAC.

The petition is allowed in the above terms.

Dasti.

NAVIN CHAWLA, J

DECEMBER 19, 2017/Nk