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

+ **FAO(OS) (COMM) 200/2017**

PACE POWER SYSTEMS PRIVATE LIMITED. Appellant

Through: Mr.Parag Tripathi, Sr.Adv. with Mr.Anirudh
Wadhwa, Mr.Vipul Kumar, Mr.Bhargav Thali
and Ms.Mishika, Advocates.

versus

M/S BHARTI INFRATEL LIMITED

..... Respondent

Through: Mr.Rohit Aggarwal and Ms.Rekha Dwivedi,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **22.11.2017**

C.M.42298/2017 (exemption)

1. Exemption is allowed subject to just exceptions.
2. Application stands disposed of.

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3. Challenge in this appeal is to the order dated 17.11.2017 by which while issuing summons in the suit and notice in the application under Order XXXIX Rule 1 & 2 CPC (I.A.No.13480/2017), no interim direction for stay of arbitration proceedings has been granted.
4. Mr.Parag Tripathi, learned Senior Counsel appearing for the appellant submits that the parties are governed by the Micro, Small and Medium Enterprises Development Act, 2006 ((MSMED)). The appellant had approached MSMED Council under Chapter IV of the Act on 31.07.2017, when notice was issued to the respondent. Learned Senior Counsel for the appellant further submits that the respondent had participated in the proceedings when they appeared and sought time to file a reply. It is also the submission of learned Senior Counsel for the appellant that the submissions so made before the learned Single Judge were not dealt with and the matter was simply adjourned for 19.12.2017 without taking into consideration that the Arbitrator has proceeded ahead with the matter.

5. Mr.Rohit Aggarwal, learned counsel for the respondent submits that the respondents did not participate in the proceedings before the MSMED and had only appeared in the matter and not submitted to their jurisdiction. Mr.Aggarwal also submits that the parties are governed by the arbitration clause contained in the agreement signed between the parties. Mr.Aggarwal further submits that no prejudice is being caused to the rights of the appellant as, when the Arbitrator was informed about the pendency of the Civil Suit on 20.11.2017, he adjourned the matter to a date post the date fixed in the Civil Suit i.e. to 29.12.2017. Mr.Aggarwal further submits that in case no protection is granted to the appellant before the Single Judge, the respondent will not object to further time being granted to the appellant to file their reply and counter claim.
6. We have heard learned counsel for the parties.
7. Without expressing any opinion on the merits of the matter, having regard to the fact that the matter is listed before the learned Single Judge on 19.12.2017, and the matter is now listed before the learned Arbitrator on 29.12.2017 and in view of the stand taken by Mr.Aggarwal with regard to extension of time if required, we deem it appropriate to dispose of the present appeal. Counsels for the both the parties submit that they would not seek an adjournment before the learned Single Judge.
8. The appeal stands disposed of.

C.M.42297/2017 (interim relief)

9. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J

V. KAMESWAR RAO, J

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