

\$~26

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

+ **FAO(OS) (COMM) 225/2017**

RELIANCE COMMUNICATIONS LIMITED Appellant

Through: Mr.Ravindra Srivastav, Sr.Adv. with
Mr.Vaibhav Niti, Ms.Ruchi Sahay,
Mr.Abhijeet Srivastav, ms.Garima
Tiwari and Ms.Shruti Garg, Advts.

versus

ATC TELECOM INFRASTRUCTURE PRIVATE LTD & ANR

..... Respondents

Through: Mr.Sandeep Sethi, Sr.Adv. with
Mr.Raj Shekhar Rao, Mr.Krishnayan
Sen, Mr.Rishad A. Chowdhary and
Mr.Ankit Jain, Advts. for R-1.
Mr.Akhil Sibal, Sr.Adv. with
Mr.Shivek Trehan and Ms.Fareha
Ahmad Khan, Advts. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

21.12.2017

CAV 1114/2017

Mr.Akhil Sibal, learned Senior Counsel, on instructions, has appeared on behalf of the Caveator.

Accordingly, the Caveat Petition stands disposed of.

C.M.46973-46974/2017 (exemption)

Exemptions are allowed subject to all just exceptions.

Applications stand disposed of.

FAO(OS) (COMM) 225/2017 & C.M.46972/2017 (stay)

Aggrieved by the order dated 06.12.2017 passed by the learned Single Judge in a petition filed by respondent no.1 under Section 9 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act'), has led to filing of the present appeal.

Mr.Ravindra Srivastav, learned Senior Counsel appearing for the appellant, submits that reading of the interim order would show that in fact the learned Single Judge has finally decided the matter without granting an opportunity to the appellant herein to file reply and place relevant documents on record. Learned Senior Counsel further submits that the learned Single Judge has not ruled on the preliminary objection raised by the appellant herein with regard to the maintainability of the petition filed under Section 9 of the Arbitration Act as there is no arbitration agreement between the appellant and respondent no.1. Mr.Srivastava, learned Senior Counsel has also contended that the appellant did not have any opportunity to bring to the notice of the learned Single Judge that the appellant is undergoing a Strategic Debt Restructuring in terms of the guidelines issued by the RBI in order to revive the company and in view thereof a direction to give an undertaking not to alienate the assets till the pendency of this petition would cause serious prejudice to the rights of the appellant. Moreover, the moveable and immoveable properties of the appellant are either mortgaged or a subject matter of a charge to the financial institutions.

After some hearing, it is agreed that the first part of the directions as far as it relates to filing of an affidavit disclosing the assets i.e. moveable and immoveable properties are concerned, the same would be filed and with respect to the second direction the appellant would seek variation of the impugned order. The learned Senior Counsel also prays that this Court should clarify that the order dated 06.12.2017 is only an interim order and only a prima facie view was taken by the Court and the Section 9 petition

would be heard uninfluenced by the observations made in the order dated 06.12.2017 and parties would be free to raise all grounds including legal objections at the time of final hearing.

Mr.Sandeep Sethi and Mr.Akhil Sibal, learned Senior Counsels appearing for respondents no.1 and 2 respectively, on instructions, submit that the order dated 06.12.2017 is an interim order and only a prima facie view has been taken which is also reflected in the impugned order and they would have no objection if both the parties are heard on all grounds available to them at the time of hearing.

Mr.Srivastava, learned Senior Counsel appearing for the appellant submits that in view of the above observations, he does not wish to press the present appeal, however, he prays that liberty be granted to the appellant to approach the learned Single Judge seeking early hearing in the matter and also for modification of the order dated 06.12.2017.

Accordingly, the present appeal and C.M.46972/2017 stand dismissed as not pressed. Liberty, as prayed for, is granted.

Time for filing the affidavit, as prayed, is also extended by another period of two weeks. We make it clear that we have not expressed any opinion on the merits of the matter.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 21, 2017

rb/

FAO(OS) (COMM) 225/2017

page 3 of 3