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

% *Date of Judgment: 2nd February, 2018*

+ **FAO(OS) (COMM) 19/2018**

RELIANCE COMMUNICATIONS LTD. Appellant

Through Mr. Ravindra Srivastava, Senior Advocate with Mr. Shally Bhasin, Mr. Chaitanya Sahay and Mr. Raghav Pandey, Advocates

versus

ATC TELECOM INFRASTRUCTURE PVT. LTD. & ANR.

..... Respondents

Through Mr. Sandeep Sethi, Senior Advocate with Mr. Rajshekhar Rao, Mr. Rishad A. Chowdhury, Mr. Krishnayan Sen and Mr. Ankit Jain, Advocates for respondent no.1.
Mr. Akhil Sibal, Senior Advocate with Mr. Shivek Trehan, Ms. Fareha Ahmad Khan and Ms. Jhanavi Mitra, Advocates for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CAV.PET.89/2018

1. Mr. Sethi, learned Senior Counsel, on instructions, appears on behalf of the caveator.
2. Accordingly, the Caveat Petition stands disposed of.

CM.APPL 4053-4054/2018(Exemption)

3. Exemption allowed, subject to all just exceptions.
4. The applications stand disposed of.

FAO(OS) (COMM) 19/2018

5. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 filed by the appellant. The appellant, being aggrieved by an interim order passed by the learned Single Judge dated 06.12.2017, had filed an appeal being FAO(OS)(COMM) 225/2017 which was heard and disposed of by this Court by an order dated 21.12.2017. In the order, it was noticed as under:

“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.”

6. The appellant herein, post the passing of the aforesaid order, filed an application being I.A.864/2018 seeking modifications/variation of the order dated 06.12.2017.
7. Mr. Srivastava, learned Senior Counsel appearing for the appellant submits that the aforesaid application was listed on 19.01.2018 and has been adjourned for 05.02.2018 without any opportunity of hearing to the appellant. The apprehension of the appellant is that since part of the order dated 06.12.2017 has not been complied with, the learned Single Judge may not hear I.A.864/2018. Moreover, the respondent

has issued a notice informing the appellant that non-compliance of the order would amount to contempt of Court.

8. Mr. Sethi, learned Senior Counsel who appears for the caveator submits that no appeal is maintainable and the apprehension of the appellant is unfounded as the respondents had not filed any application under Order XXXIX Rule 2A CPC. Mr. Sethi also submits that the application is listed for hearing on 05.02.2018 and thus, there would be no reason for this Court to interfere with the order passed by the learned Single Judge.
9. We have heard the learned Senior Counsels for the parties. The reading of the order dated 19.01.2018 leaves no room for doubt that the learned Single Judge was conscious of the order passed by this Court on 21.12.2017 which is evident from the fact that the learned Single Judge has fixed I.A.864/2018 on 05.02.2018, although the main petition was is listed for 10.04.2018, which date has been cancelled by the learned Single Judge.
10. At this stage, both the parties submit that they would not seek an adjournment on 05.02.2018 when the matter is listed before the learned Single Judge.
11. Accordingly, with the consent of both the parties, the present appeal is disposed of with the following agreed directions:
 - (i) Parties would not seek an adjournment before the learned Single Judge when the matter is listed on 05.02.2018 for hearing;
 - (ii) Parties would be at liberty to raise all legal objections as available to them, in accordance with law.

12. The appeal stands disposed of in above terms.

CM.APPL 4051/2018(stay)

13. The applications stand disposed of in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 02, 2018

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