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

+ **ARB.P. 181/2018**

TECHNOSAT COMM (INDIA) PVT.LTD Petitioner

Through: Mr Aaditya Vijay Kumar, Ms
Raddhika Khanna and Ms Liza
Baruah, Advocates.

versus

BHARAT SANCHAR NIAGAM LTD. Respondent

Through: Mr Rajat Arora and Mr V. Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.03.2018**

I.A. 3304/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with the Advance Purchase Order dated 27.08.2015 (hereafter 'the Agreement').

4. The General (Commercial) Conditions (GCC) of the Agreement includes an arbitration clause, which reads as under:-

“20.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with

(except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BSNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BSNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996 as amended from time to time. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BSNL or the shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

- 20.2 The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

20.3 The venue of arbitration shall be BSNL CO New Delhi and/or Circle/SSA HQ or the office of the Arbitrator situated at New Delhi or at the respective Territorial Circle/SSA HQ, as the case may be.”

5. In view of the above disputes that are stated to have arisen between the parties, the petitioner invoked the arbitration clause by a letter dated 23.01.2018. However, the respondent has not constituted the Arbitral Tribunal as yet. The learned counsel appearing for the respondent submits that the respondent has no objection if the arbitrator is appointed by this Court.

1. In view of the above, Mr. Justice R.V. Easwar, Retired. Judge, Delhi High Court (Mobile No. 9560899997) is appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

2. The learned counsel appearing for the parties agree that the arbitration be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules. It is so directed.

3. The parties shall appear before the Coordinator, DIAC on 23.03.2018 at 03:30 p.m. for further proceedings.

6. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 09, 2018
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