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

+ **ARB. A. (COMM.) 15/2018**

**RELIANCE COMMUNICATION LIMITED
& ANR.**

..... Petitioners

Through: Mr A.S. Chandhiok, Senior Advocate
with Mr Chaitanyr, Mr Abhijeet
Sinha, Mr Aditya Shukla, Mr Manon
Shukla, Mr Rishi Agarwala and Mr
Pankaj, Advocates.

versus

INDUS TOWER LIMITED

..... Respondent

Through: Mr Gopal Jain, Senior Advocate with
Mr Rajeev Sharma, Mr Nishant
Menon, Mr Shafiq Ahmed, Ms Kavita
Sarin and Ms P. Rao, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.03.2018

Cav. 219/2018

1. The learned counsel appearing for the respondent has entered appearance. The caveat stands discharged.

IA Nos. 3709-3710/2018

2. Exemptions are allowed, subject to all just exceptions.

3. The applications stand disposed of.

ARB. A. (COMM.) 15/2018 & IA No. 3708/2018

4. The petitioner has filed the present petition under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*,

impugning the *ad interim* order dated 09.03.2018 passed by the Arbitral Tribunal, whereby the petitioner has been called upon to furnish a Bank Guarantee in the sum of ₹98.68 crores (₹63.89 crores claimed towards service charges plus ₹34.79 crores claimed towards exit charges).

5. Mr Chandhiok, the learned Senior Counsel appearing for the petitioner has sought to assail the said order, essentially, on four grounds. First, he submits that the Arbitral Tribunal could not have passed an *ad interim* order under Section 17 of the Act, as the petitioner's application under Section 16 of the Act challenging the jurisdiction of the Arbitral Tribunal was pending. He submits that the Arbitral Tribunal was required to adjudicate that application prior to granting any *ad interim* relief.

6. Second, he submits that the *ad interim* order was second in the series of *ad interim* orders and once the Tribunal had passed an *ad interim* order on 24.01.2018, there was no occasion for the Arbitral Tribunal to pass another order.

7. Third, he submits that the CDR Scheme was pending and there was no averment made by the petitioner as required under Order XXXVIII Rule 5 of CPC, which would warrant any such *ad interim* order. Lastly, he submits that the claim made by the petitioner was in the nature of damages and, therefore, no *ad interim* order for securing the petitioner was warranted.

8. This Court is refraining from making any observations with regard to the submissions made on behalf of the petitioner, since the order passed by the Arbitral Tribunal is an *ad interim* order and the matter is listed for further consideration on 26.03.2018. In the circumstances, this Court is of

the view that no interference is warranted at this stage. However, the Arbitral Tribunal is requested to consider the said application and pass a final order under Section 17 of the Act on the next date of hearing or immediately thereafter.

9. It is clarified that nothing stated in this order shall be construed as an interdiction of any directions contained in the impugned *ad interim* order passed by the Arbitral Tribunal.

10. The petition and the application are disposed of.

11. Order *dasti*.

VIBHU BAKHRU, J

MARCH 19, 2018
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