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

+ **O.M.P.(MISC.)(COMM.) 160/2018 & I.A. NO. 9325/2018**

INTERNATIONAL TRENCHING PVT. LTD. Decree Holder

Through: Mr. Atul Kumar, Ms. Sweety Singh,
Ms. Archana Kumari, Mr. Rahul
Pandey, Mr. Tushar Duneja, Advs.

versus

RAILTEL CORPORATION OF INDIA LTD. Judgement Debtor

Through: Mr. J.K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **19.07.2018**

I.A. NO. 9325/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(MISC.)(COMM.) 160/2018

This joint application has been filed by the parties under Section 29A (4) & (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act') *inter alia* making the following prayer:-

"b) make a clarification whether the instant five cases as stated above shall be adjudicated by the old Arbitration & Conciliation Act, 1996 (without amendment of 2015) or as per the mandate of the amended Arbitration & Conciliation Act of 2015.

c) extend the time period by 6 months for conducting the arbitral proceedings and making the Award by the Arbitral Tribunal in the five cases titled as "International Trenching Pvt. Ltd. Vs. Railtel Corporation of India Ltd." pending adjudication before

*the Arbitral Tribunal consisting of one sole arbitrator
Mr. Justice (Retd.) Anil Dev Singh.”*

The admitted case of the parties is that the petitioner had invoked the Arbitration Agreement between the parties vide its letter dated 18.10.2014 and thereafter, on an application filed under Section 11, this Court had appointed the Sole Arbitrator vide its order dated 22.12.2015. The parties proceeded before the Arbitrator on the basis that the arbitration proceedings would be governed by the provisions of the Arbitration and Conciliation (Amendment) Act, 2015. This is evident from the fact that the parties had earlier agreed to the extension of time for making of an award in terms of Section 29A (3) of the Act and thereafter had even filed an application before this Court seeking extension of time for making of the award beyond the period of one and half years as prescribed in Section 29A(5) of the Act. The same was allowed by this Court vide its order dated 20.11.2017 passed in OMP (Misc.)(Comm) 51/2017.

Section 26 of the Arbitration and Conciliation (Amendment), 2015 reads as under:-

***“26. Act not to apply to pending arbitral proceedings.-
Nothing contained in this Act shall apply to the arbitral
proceedings commenced, in accordance with the
provisions of Section 21 of the principal Act, before the
commencement of this Act unless the parties otherwise
agree but this Act shall apply in relation to arbitral
proceedings commenced on or after the date of
commencement of this Act.”***

Reading of the above provision shows that even when the arbitration proceedings have commenced, in accordance with the provisions of Section

21 of the Act, before the commencement of the Amending Act, the parties can agree that the Amended Act shall apply to such proceedings. In the present case as the parties have agreed that the arbitration proceedings shall be governed by the Amended Act, there is no further clarification required in this regard.

As far as the prayer for extension of time is concerned, as this is a joint application filed by the parties, the time for making of the award is extended by a further period of nine months with effect from today.

The petition is disposed of in the above terms, with no order as to cost.

NAVIN CHAWLA, J

JULY 19, 2018

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