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

+ ARB. A. (COMM.) 41/2018 & CAV 760/2018 & I.A. Nos.
11329/2018 and 11330/2018

MAHANAGAR TELEPHONE NIGAM LIMITED..... Appellant

Through: Mr. Saket Sikri with Mr. Ajay Pal
Singh and Ms. Niyati Patwardhan,
Advs

versus

CYFUTURE INDIA PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **27.08.2018**

1. This is an appeal filed against the order dated 06.08.2018.
2. It is not in dispute that by virtue of a contract awarded in favour of the respondent, the respondent was required to extend his services between 07.10.2016 to 06.10.2017.
3. The contract between the parties which is encapsulated in letter of Intent (LOI)-cum-Purchase Order, required the respondent to maintain Call Centres services.
4. The respondent, it appears, had moved an application under Section 17 of the Arbitration and Conciliation Act, 1996 (in short the '1996 Act') before the learned Arbitrator seeking release of bank guarantee in sum of Rs. 22,84,600/- and for issuance of a direction to the appellant for release of a sum of Rs. 34,48,526/- towards unpaid invoices.
5. By virtue of the impugned order, the learned Arbitrator has in fact granted the relief, *albeit*, with a caveat which is that a sum of

Rs. 5,00,000/- will be kept back towards a plausible claim that may arise with regard to claim for enhanced wages by the personnel deployed by the respondent for managing the Call Centres.

6. The learned Arbitrator has thus directed, that the bank guarantee and the amount of unpaid invoices will be paid by the appellant to the respondent after keeping back a sum of Rs. 5,00,000/-

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7. The record shows that while the appellant has no grievance with regard to the performance of the job function entrusted to the respondent, the dispute obtains with respect to payment of enhanced emoluments to the personnel deployed to manage the call centres. This liability has arisen on account of the notification dated 19.01.2017, issued by Central Government read with notification dated 3.3.2017 issued by the Government of NCT of Delhi. Therefore, quite correctly, learned Arbitrator has directed the release of bank guarantee and the payment of unpaid invoices even while protecting the appellant against potential liability towards enhanced wages.

8. Mr. Saket Sikri, learned counsel for the appellant, however, says that the liability that the appellant could be mulct with may, possibly, be higher, and that Rs. 5,00,000/- and that the said amount will protect the appellant only qua the 23 persons, who had approached the Regional Labour Commissioner, at the relevant point in time.

Mr. Saket Sikri says that the number of persons involved is much larger.

9. I may also indicate that Mr. Saket Sikri advanced a submission that the impugned order could not be sustained in view of the fact that the learned Arbitrator while exercising powers under Section 17 of the 1996 Act had granted final reliefs.

9.1 To be noted, though a preliminary objection in the very same vein was taken in the reply filed to the application under section 17, defence on merits was also put before the learned Arbitrator. The learned Arbitrator, consequently, dealt with the issue on merits and proceeded to pass the impugned direction.

9.2 Therefore, notwithstanding, the preliminary objections and assuming for the moment that a direction of the kind issued would not fall within the ambit of residuary sub-clause (e) of clause (ii) of sub-section (1) of Section 17 of 1996 Act, the impugned order could certainly be treated as an interim award and the instant appeal as a petition under Section 34 of the 1996 Act.

9.3 All that which would come in the way is the nomenclature given to the action filed before the learned Arbitrator and the resultant proceedings in this Court initiated by the appellant. Therefore, to my mind, this objection by itself would not have me take a view different from that which has been taken by the learned Arbitrator.

10. Given the aforesaid circumstances, I am of the view that there is no case made out for interference with the order of the learned Arbitrator, though, there may be something to be said with regard to

the security being furnished in favour of the appellant qua the other persons who may approach the Regional Labour Commissioner. Accordingly, liberty is granted to the appellant to move the learned Arbitrator for securing itself against any additional liability that may befall upon it upon orders in that regard being passed by the Regional Labour Commissioner.

11. Needless to say, if the learned Arbitrator is moved by the appellant in that regard, he will pass an appropriate order after hearing both the sides.

12. The observations made in this order will, however, not effect the outcome of any application that the appellant may file before the learned Arbitrator.

13. The appeal is disposed of in the aforesaid terms.

14. *Dasti.*

RAJIV SHAKDHER, J

AUGUST 27, 2018

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