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

+ O.M.P. (T) (COMM.) 2/2020 & I.As. 599-600/2020

TOPSGRUP SERVICE INDIA LIMITED Petitioner
Through: Mr. Aman Verma, Adv.

versus

BHARTI AIRTEL LIMITED Respondent
Through: Mr. Mehak Suri, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **17.01.2020**

IA. 600/2020 (for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

O.M.P. (T) (COMM.) 2/2020 & IA. 599/2020 (for stay)

The only submission made by the leaned counsel for the petitioner is that in view of the position of law declared by the Supreme Court in the cases of *TRF Limited v. Energo Engineering Projects Limited (2017) 8 SCC 377* and *Perkins Eastman Architects DPC and Anr. v. HSCC (India) Ltd. 2019 SCC OnLine SC 1517*, the arbitration Clause, of the Security Services Agreement entered between the parties on September 30, 2014, which I reproduce as under, has become invalid and the learned Arbitrator has become *dejure* ineligible to perform the function:

“30. Arbitration

30.1 Any and all disputes, controversies and conflicts

(“Disputes”) arising out of this Agreement between the Parties or arising out of or relating to or in connection with this Agreement or the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 or any amendments thereof. Prior to submitting the Disputes to arbitration the parties shall resolve to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled within 30 days of the arising thereof, the same shall be finally be settled and determined by the arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any amendment thereof. The place of arbitration shall be New Delhi and the language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator.

30.2. The sole arbitrator shall be appointed by Director Legal of Bharti Airtel Limited.

30.3. The arbitral award shall be in writing and shall be final and binding on each Party and shall be enforceable in any court of law upon any Dispute arising out of or relating to or in connection with this Agreement (infringement of IPR excepted), except for the enforcement of an arbitral award or as permitted under the Arbitration and Conciliation Act, 1996.

30.4. Pending the submission to arbitration and thereafter, till the tribunal renders its award or decision, the Parties shall except in the event of termination of this Agreement or in the event of any interim order / award is granted under the aforesaid Act, continue to perform their obligation under this Agreement.”

Learned counsel appearing for the respondent concedes to the said position in law and states that the Court may declare the Arbitration Clause to the extent of Clause 30.2 as invalid and the learned Arbitrator has become de jure ineligible to perform the functions under Arbitration and Conciliation Act, 1996 and this court may substitute the Ld. Arbitrator.

If that be so, in view of the judgments referred above, Clause 30.2, which has been reproduced above is declared invalid and consequently this Court holds that the learned Arbitrator de jure ineligible to perform the function of an Arbitrator.

This Court, in exercise of its power under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996, appoints Justice Badar Durrez Ahmed, retired Chief Justice of the Jammu and Kashmir High Court as the Sole Arbitrator, who shall adjudicate the disputes between the parties. The appointment of Justice Badar Durrez Ahmed shall be regulated by the provisions of the Arbitration and Conciliation Act, 1996.

The petition stands disposed of.

V. KAMESWAR RAO, J

JANUARY 17, 2020/jg