

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**REQUEST CASE No.62 of 2021**

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M/S Nortel Networks (India) Pvt. Ltd. a Company registered under Companies Act 1956 through its authorized signatory Rabindra Kumar Singh aged about 54 years (M) s/o late Shambhu Sharan Singh, working as Circle Prime, Bihar Circle, M/S Nortel Networks (India) Pvt. Ltd. No. 956, 9th Floor, Regus Business Centre, Raheja Towers, East Wing, M.G. Road, Bangluru, 560001.

... .. Petitioner/s

Versus

1. Bharat Sanchar Nigam Limited in short BSNL, a Government of India Enterprises, through Chief General Manager, Bihar Telecom Circle, Patna.
2. Chairman and Managing Director, BSNL - Corporate Office, HC Mathura Lane, Opp. Hotel Janpath, Connaught Place, New Delhi, 110001.
3. Chief General manager, Bihar Telecom Circle, BSNL, Sanchar Sadan Building, Buddha Marg, Patna - 1.
4. Chief General Manager cum Nodal Head, Eastern Zone, West Bengal Telecom Circle, BSNL, No. 1 Council House Street, 4th Floor, CTO Building, Kolkata, 700001.
5. A.O., (CMTS), Paying Authority, Office of the Chief General Manager, Bihar Telecom Circle, BSNL, Patna- 1.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Prabhat Ranjan Singh, Advocate  
For the Respondent/s : Mr.Harendra Prasad Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**ORAL JUDGMENT**

**Date : 10-08-2022**

Petitioner has prayed for the following relief(s):-

“For appointment of independent arbitrator, among the empanelled retired Hon’ble Judges of this Hon’ble Court for resolution of dispute of delayed payment against the supply, installation and also service rendered by the petitioner to the respondent BSNL;



AND for any other relief(s) for which petitioner is found entitled on the facts of this case and also in the eye of law.”

It is not in dispute that for the first time the parties to the agreement invoked the arbitration clause on 24<sup>th</sup> of October, 2020 (Annexure-4, page-73). It is also not in dispute that the respondents did not respond to the said communication at all. It is only when the instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed on 20.09.2021, in response thereto, the respondents, referring to the decision rendered by Hon’ble The Apex Court in Civil Appeal Nos.843-844 of 2021 (Arising out of SLP (C) No.1531-32/2021), titled as Bharat Sanchar Nigam Ltd. & Anr. Vs. M/s Nortel Networks India Pvt. Ltd. (page-112) have opposed the petition on the ground of limitation.

In the considered view of the Court, reliance upon the decision in Nortel (supra) is totally misconceived inasmuch as the issue before Hon’ble The Apex Court was the applicability of the period of limitation prescribed under Article 137 of the Limitation Act, 1963 in reference to the application filed under Section-11 of the Arbitration and Conciliation Act, 1996. Whether the petitioner’s claim was stale, barred by limitation or not, was not a matter in issue before the Court in



the said case. In fact, the said decision clarifies the position on the issue of limitation in the following terms:

**Para-40.Conclusion**

“Accordingly, we hold that:

(i) The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator;

It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings;

(ii) In rare and exceptional cases, where the claims are *ex facie* time-barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.”

In the instant case, it could not be pointed out as to how the dispute is not subsisting and/or is *ex facie* time-barred, for there is no material on record to establish such fact, save and except for returning minutes i.e. the report of the High Powered Committee on liquidation damage dated 07.06.2012. It be only noted that petitioner has been pursuing the matter with the respondent, as is evident from several communications, including the respondents’ response dated 20<sup>th</sup> of June, 2019 (Annexure-R/4, page 27) and the respondents’ action of taking



steps in the direction of appointing the arbitrator in the year 2021.

The existence of a written agreement containing an arbitration clause is not in dispute, as is also evident from Clause-20 of the written agreement dated 14<sup>th</sup> of October, 2004; the disputes are civil in nature; and that the petitioner has been pursuing the matter, including invoked the arbitration clause vide communications dated 24<sup>th</sup> of October, 2020 (Annexure-4, page-73) and 29<sup>th</sup> of January, 2021 (Annexure-6, page-76). In fact, as late as communication dated 4<sup>th</sup> of January, 2021 (Annexure-5, page-75), the respondents themselves had contemplated the matter of appointment of an independent arbitrator for which process stood initiated.

As such, Hon'ble Mr. Justice A.K. Sikri, Former Judge of Hon'ble Supreme Court of India (Mobile No.9818000300) is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement dated 14<sup>th</sup> of October, 2004 entered into between the parties to the *lis*.

All pleas and issues raised, on merits, including that of claims being stale/barred by limitation, are left open to be considered and decided in the arbitral proceedings.

Learned Arbitrator shall be entitled to fee as per the



schedule of the Act.

Since the dispute arises out of an agreement executed in the year 2004, the hearing be expedited.

Parties are directed to fully cooperate and not take any unnecessary adjournment.

The proceedings, during the time of current Pandemic- Covid-19 (restrictions still notified by the State Government) shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

It is expected of the learned Arbitrator to decide the issues expeditiously.

Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

Learned counsel for the parties to communicate the order to the learned Arbitrator. Also, parties are directed to appear before him, through physical/digital mode on 07.09.2022 and apprise him of passing of this order.

Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

The Request Petition stands disposed of in the above



terms.

Interlocutory Application(s), if any, shall stand  
disposed of.

**(Sanjay Karol, CJ)**

K.C.Jha/-

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