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

\+ O.M.P.(I) (COMM.) 127/2023 & I.As. 9126/2023, 26230/2023

ATC TELECOM INFRASTRUCTURE PVT LTD ..... Petitioner

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Tishampati Sen, Ms. Risdhi Sancheti, Mr. Anurag Anand, Mr. Mukul Kulhari, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ANR. ..... Respondents

Through: Mr. Parvinder Chauhan, Ms. Aakriti Garg, Advocates for DUSIB.

Ms. Pooja B. Saini, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **13.02.2024**

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], in anticipation of arbitral proceedings, pursuant to a contract between the parties for renting of the respondent's sites for installation of mobile towers at the respondent's community centres and office locations.

2. Learned counsel for the parties state that the contract has expired, by lapse of time, during the pendency of this petition. The petitioner has filed I.A. 26230/2023 seeking further directions, most importantly a

direction upon the respondent-Delhi Urban Shelter Improvement Board ["DUSIB"] to permit the petitioner to remove telecom towers/poles and related equipment from the sites in question.

3. Learned counsel for the parties also state that an effort has been made to reconcile accounts with regard to pending license fees between the parties. Mr. Jayant Mehta, learned Senior Counsel for the petitioner, states that he has been instructed that an amount of Rs.23.51 lakhs is due to the respondent on this account. However, Mr. Parvinder Chauhan, learned counsel for DUSIB, submits upon instructions that the figure is Rs.40 lakhs. There is also some dispute with regard to Tax Deducted at Source ["TDS"] deducted by the petitioner. Learned counsel on both sides are hopeful that they will be able to resolve these two disputes amicably, without the necessity of going to arbitration.

4. However, Mr. Mehta seeks urgent relief with respect to the removal of telecom towers/poles and related equipment from the tower sites. Mr. Chauhan is also agreeable to this request, as the agreement has admittedly lapsed, and DUSIB is holding a bank guarantee of the petitioner to the tune of Rs.3.3 crores.

5. Having heard learned counsel for the parties and with their consent, the petition, alongwith pending applications, is disposed of with the following directions:

A. Respondent No. 1 – DUSIB will permit the petitioner to remove its telecom towers/poles and related equipment from the concerned sites immediately.

B. The petitioner undertakes to pay a sum of Rs.23.51 lakhs, less TDS as applicable, to the respondent within a maximum period of one week from today.

C. The parties may make an effort to resolve the disputes with regard to the difference in their computation of arrears of license fee, and also with regard to the question of TDS deducted by the petitioner.

D. If they are not able to reconcile these disputes within a period of four weeks, the petitioner will pay the remaining amount of Rs.16.49 lakhs [net of TDS] to the respondent within a period of two weeks thereafter, without prejudice to its rights and contentions. The same will be subject to the result of the arbitration proceedings, if invoked.

E. In the event any dispute remains for adjudication between the parties, after the lapse of six weeks from today, the disputes will be resolved by arbitration under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 ["DIAC"]. DIAC is requested to nominate an arbitrator from its panel, if approached by either of the parties. Learned counsel for the parties submit that the arbitration be entrusted to a counsel with experience in income tax law. They can make this request to DIAC, if the need arises.

F. The arbitration will be subject to the Rules of DIAC, including as to the remuneration of the learned arbitrator. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act prior to entering upon reference.

G. By an order dated 21.04.2023, this Court had directed DUSIB to maintain *status quo* with regard to the recovery certificate issued by it, and bank guarantee furnished by the petitioner. This direction will continue, subject to any orders passed by the learned arbitrator under Section 17 of the Act, and subject to the bank guarantee being kept alive.

6. Copy of this order be given *dasti* under the signatures of the Court Master.

PRATEEK JALAN, J

FEBRUARY 13, 2024
"Bhupi"/