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

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Date of Decision : 23.04.2024+ **FAO(OS) (COMM) 77/2024 & CM APPL. 22993-94/2024**

HOTEL CORPORATION OF INDIA LTD. Appellant
Through: Mr.A.P.Singh, Mr.Varnit Vashistha
and Ms.Akshada Mujwar, Advocates.

versus

INDUS TOWERS LIMITED Respondent
Through: Mr.Shashank Garg, Ms.Shivangi
Bajpai, Ms.Aradhya Chaturvedi,
Mr.Ashwani Malhotra, Mr.Mehul
Parti, and Ms.Nishtha, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant (hereafter *HCIL*) has filed the present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 27.03.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge in OMP(I)(COMM) No.67/2024 captioned *Indus Towers Limited v. Hotel Corporation of India*.

2. The respondent (hereafter *ITL*) had preferred the said petition under Section 9 of the A&C Act, *inter alia*, praying that HCIL be restrained from interfering with ITL in dismantling its equipment on the licensed premises



(roof of Centaur Hotel, near IGI Airport, Terminal III, New Delhi) and removing the same from the said premises.

3. Essentially, ITL sought that HCIL be restrained from obstructing or preventing ITL in any manner from removal of its movable assets (mainly mobile towers) that were located at HCIL's premises. The parties had entered into three separate agreements in respect of installation of the respective equipment, servicing three telecom operators – Airtel, Vodafone, and Idea. The equipment /mobile towers were placed over the roof of HCIL's premises, Centaur Hotel, near IGI Airport, Terminal-III, New Delhi (hereafter *the said premises*). In terms of the respective agreements, ITL had furnished the security deposits and also agreed to pay monthly license fees for use of the said premises. The agreement in respect of equipment servicing the telecom operator, Idea, is not the subject matter of ITL's petition.

4. The agreements in respect of equipment installed to service Airtel and Vodafone expired on 20.11.2019 and 30.04.2020, respectively. Notwithstanding that the said agreements had expired, ITL did not immediately remove its equipment from the said premises. It is HCIL's case that ITL continued to occupy the given space on the roof top of the said premises and is, therefore, required to pay the license fee and damages. HCIL claims that the total outstanding amount payable by ITL as on date exceeds the security deposits provided by ITL.

5. HCIL has annexed a computation statement indicating that the total amount payable by ITL is ₹3,81,52,853/- (Rupees Three Crore Eighty One



Lacs Fifty Two Thousand Eight Hundred and Fifty Three only). Out of aforesaid sum, ₹2,47,74,477/- (Rupees Two Crore Forty Seven Lacs Seventy Four Thousand Four Hundred and Seventy Seven only) is claimed in respect of the agreement dated 18.10.2018 (in respect of equipment installed for Vodafone) and a sum of ₹1,22,53,655/- (Rupees One Crore Twenty Two Lacs Fifty Three Thousand Six Hundred and Fifty Five only) is payable in respect of agreement dated 20.09.2016 (in respect of equipment installed for Airtel).

6. The aforementioned sum of ₹3,81,52,853/- also includes the amount of ₹11,24,721/- (Rupees Eleven Lacs Twenty-four Thousand and Seven Hundred and Twenty One only) payable in respect of a third agreement dated 18.10.2018 (for servicing Idea) which is not a subject matter of the controversy in the present appeal as, admittedly, ITL has removed the equipment and paid the rental charges. However, according to HCIL, ITL is liable to pay late payment charges on the rental for the period from the year 2012 to 2020 as well as electricity charges quantified at ₹ 4,64,970/- (Rupees Four Lacs Sixty-Four Thousand Nine Hundred and Seventy only). It is contended on behalf of ITL that a security deposit of ₹36,72,000/- (Rupees Thirty-Six Lacs and Seventy-Two Thousand only) paid in respect of the said agreement has not been refunded and ITL reserves the right to make a claim in that regard. The dispute regarding the agreement dated 18.10.2018, as noted above, is not a subject matter of the controversy in the present appeal.

7. HCIL's grievance, essentially, is that the dues payable by ITL in respect of the two agreements in question are not fully covered by the



security deposits furnished by ITL. HCIL has averred in the present appeal that it wants to resolve the disputes amicably but permitting ITL to remove its equipment from the said premises would frustrate the said process.

8. The learned Single Judge has considered the controversy in reference to the terms of the agreements (which are similarly worded) and in particular Clauses 37 & 38 of the agreements. The learned counsel for HCIL also relied upon the said agreements in support of his contention that HCIL has a right to prevent ITL from removing the mobile towers from its premises. The said clauses, Clause 37, and Clause 38, of the agreements are set out below: -

“37. The Licensee shall forthwith take out their installations and other paraphernalia and will have no right to occupy and to carry on business on the said site. The Licensee shall forthwith remove themselves, their equipment's/antenna, temporary structure etc. and hand over the vacant and peaceful possession of the said site and Licensee shall have no right to enter the site. The Licensee shall forthwith pay all the amounts due and payable by them under this Agreement before leaving the site on expiry/ termination of this license as aforesaid. If the Licensee does not remove themselves its antennas etc. and belongings from the site on the date of expiry or termination of the license as aforesaid the Licensee shall pay to the Licensor damages at the rate of Rs.10,000.00 (Rupees ten thousand only) for each day of such unauthorized occupation in addition to monthly rental for each day of such unauthorized occupation. In the event of termination of the license or the Licensee committing breach of any of the terms and



conditions of this Agreement the Licensee shall not claim or be entitled to any refund of license fees or service charges paid in advance.

38. On the termination or expiry of the License, the Licensee shall not have the right to enter the site of the Licensor except for the purpose of removing their goods within reasonable period with permission of the Licensor and in the event of the Licensee not removing their materials from the site within 30 days of such termination, the Licensor is entitled to dismantle all the installations and dispose off the material at the sole discretion of the Licensor and the Licensee will not claim any damages, costs etc., from the Licensor.'

9. It is HCIL's contention that since it had a right to dismantle and dispose of ITL's material at its sole discretion on its failure to remove the same within a period of thirty days of the termination of the licenses (agreements), ITL is now precluded from claiming the same.

10. A plain reading of the said Clause 37 of the agreements in question indicate that ITL was obliged to remove its equipment /antenna and the temporary structures installed at the said premises on termination of the agreement. Clause 38 of the agreements enables HCIL to dismantle and remove the installations/equipment in the event ITL fails to do so within a period of thirty days from the termination of the agreement(s) in question. It is apparent that the import of Clause 37 is to enable HCIL to recover its site on termination of the license agreements executed between the parties and not to expropriate the material /movable assets belonging to ITL.

11. Admittedly, HCIL has not dismantled, removed or disposed of the



mobile towers. Plainly, ITL is entitled to remove its assets. *Prima facie* even if HCIL had exercised its right to dismantle and dispose of the material, it would be liable to account for the same.

12. We are unable to accept that the Clause 38 of the agreement could be read as an expropriatory clause entitling HCIL to usurp ITL's assets on failure of ITL to remove the same on termination of the license agreement(s) in question.

13. At this stage, the learned counsel appearing for HCIL requests this Court for not returning any further finding (*prima facie* or otherwise) on the grounds raised and states that the disputes regarding the interpretation of the agreement be left open for the learned Arbitrator.

14. In view of the aforesaid request, we refrain from making any further observation in regard to the grounds raised in the present appeal except to say that we find no infirmity with the decision of the learned Single Judge in granting interim relief. We also clarify that all observations made by the learned Single Judge in the impugned order as well any of the observations made in this order are *prima facie* and will not preclude the parties from raising any such grounds, as advised.

15. HCIL has also challenged the impugned order to the extent that learned Single Judge had proceeded to appoint the learned Arbitrator to adjudicate upon the disputes between the parties. However, the impugned order indicates that the learned Arbitrator was appointed at the instance of the parties and with their consent. The learned counsel appearing for HCIL submits that the appointment of an Arbitrator is beyond the scope of Section



9 of the A&C Act and therefore, notwithstanding the parties were agreeable for the Court to appoint the arbitrator, the Court had no jurisdiction to do so.

16. The learned counsel for ITL points out that orders passed by the learned Single Judge prior to the impugned order have been concealed by HCIL. He refers to an order dated 15.03.2024 passed by the learned Single Judge. During the course of proceedings on the said date the learned counsel appearing for ITL had made an offer that ITL was agreeable that an Arbitrator be appointed in the said proceedings. The learned counsel for HCIL had sought time to take instructions in this regard.

17. The impugned order records that it is in furtherance of orders dated 01.03.2024 and 15.03.2024. Admittedly, the learned counsel for HCIL had consented to the appointment of the Arbitrator by the Court. This was with instructions as the preceding order 15.03.2024 indicates. The learned counsel for HCIL states that HCIL's consent for appointment of the Arbitrator by the Court is not in question; the challenge is confined to the jurisdiction of the Court to appoint the Arbitrator notwithstanding that both the parties have consented and requested the Court to do so.

18. We find no merit in the aforesaid contention. It is not a case where the learned Single Judge lacked inherent jurisdiction to appoint the arbitrator. Admittedly, the jurisdiction to appoint an arbitrator under Section 11 of the A&C Act also vests with the same Court. The learned Single Judge has thus dispensed with the formality of moving a separate application and had proceeded to appoint an Arbitrator with the express consent of the parties. Since the Court did not lack the jurisdiction to pass the order



appointing the arbitrator, we find no reason to interfere with the said decision.

19. It is also relevant to note that on a pointed query as to what is HCIL's grievance with the appointment of the Arbitrator; the learned counsel for HCIL fairly states that the appellant wants to resolve the disputes amicably before progressing further down the path of litigation.

20. In this regard, we clarify that appointment of the Arbitrator would not preclude the parties from making any efforts to resolve the disputes amicably. Obviously, if the parties amicably resolve their disputes, it would not be necessary for them to pursue the arbitral proceedings and they can always communicate the same to the learned Arbitrator. Section 30 of the A&C Act also provides that an amicable settlement is not incompatible with the arbitration agreement and the Arbitral Tribunal would encourage such settlement. Thus, any apprehension on the part of HCIL in this regard is unfounded.

21. The learned Single Judge has provided ten days' time to the respondent to remove the mobile towers and equipment from the premises. However, HCIL has frustrated the time-lines specified in the impugned order. ITL is now provided further time of ten days to remove the said equipment. ITL shall commence dismantling the equipment / mobile tower from 29.04.2024 and complete the task within a maximum period of ten days thereafter. HCIL will not impede ITL in any manner in doing so. However, ITL shall ensure that the said task is done in a manner that does not unduly interfere with the operation of hotel in question. The parties shall



also comply with the directions regarding inventorisation and documenting the condition of the equipment at the time of removal.

22. The appeal is dismissed with the aforesaid directions. Pending applications also stand disposed of.

23. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 23, 2024

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Click here to check corrigendum, if any