



2024:DHC:7081



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 927/2024

**IACUITY TELCO SOLUTIONS PVT. LTD.
(FORMERLY KNOWN AS XALTED INFORMATION
SYSTEMS PVT. LTD.)**

.....Petitioner

Through: Mr. Nikhil Y. Chawla, Mr.
Vikas Mishra, Mr. Varun Ahuja and Mr.
Krishna Dev Yadav, Advs.

versus

BHARAT SANCHAR NIGAM LTD.Respondent

Through: Mr. Anurag Dayal Mathur,
Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****12.09.2024**

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1. The only arguments advanced by the learned Counsel for the respondent to oppose this petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹, is that the claims of the petitioner, of which the petitioner seeks reference to arbitration, are time barred.

2. That aspect cannot be examined by this Court exercising jurisdiction under Section 11(5) in view of the recent decision of the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*,² and has to be relegated for examination by the Arbitral Tribunal.



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3. The disputes arises in the context of a Purchase Order dated 27 October 2015, placed by the respondent on the petitioner. Clause 26 of the Purchase Order envisages resolution of disputes by arbitration, and sub-clause 26.1 thereunder reads thus:

“26.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BSNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BSNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD, BSNL or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD, BSNL or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a government servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a government servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BSNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.”

4. Disputes having arisen between the parties, the petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 24 April 2023. The respondent did not reply. The petitioner, thereafter, approached this Court under Section 11(5) of the 1996 Act for reference of the disputes to arbitration.

5. Accordingly, as the parties have not been able to arrive at a

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consensus regarding arbitration.

6. Accordingly, this Court refers the disputes to the Delhi International Arbitration Centre³ to appoint a suitable arbitrator to arbitrate on the disputes between the parties.

7. The arbitration shall take place under the aegis of the DIAC and shall abide by its rules and regulations.

8. The arbitrator shall be entitled to charge fees as per the schedule of fees maintained by the DIAC.

9. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act before entering on the reference.

10. All questions of fact and law including the plea of limitation shall remain open to be urged before the arbitrator.

11. The petition is disposed of in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 12, 2024/aky

Click here to check corrigendum, if any

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the DIAC", hereinafter

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