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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 206/2019, I.A. 12933/2019 & I.A. 1303/2021**

AIRCEL LIMITED & ORS.

.....Plaintiffs

Through: Mr. Salman Khurshid, Sr. Advocate
with Mr. Chaitanya Safaya, Mr. Vipul Singh, Ms.
Anwasha Padhi, Ms. Shivani Agarwal, Ms.
Tehsina Hussain, Ms. Jyoti Singh and Ms. Sonika
Choudhary, Advocates.

versus

BHARTI AIRTEL LIMITED & ANR.

.....Defendants

Through: Mr. Harsh Kaushik and Mr. Harsh
Prakash, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.08.2025

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I.A. 8720/2024

1. This application is filed on behalf of the Plaintiffs under Order XXIII Rule 1 CPC read with Section 14(3) of the Limitation Act, 1963 for permission to withdraw the suit and seeking leave to file fresh proceedings before the appropriate forum, on the same cause of action as also for a direction to exclude the time period from 15.04.2019 i.e. the date of institution of this suit till the disposal of the present application, for purpose of calculating limitation period to approach the appropriate forum.
2. To decide this application, a short backdrop is necessary. Suit was instituted by the Plaintiffs *inter alia* for a decree against the Defendants towards costs incurred and/or loss suffered by the Plaintiffs on account of breach of contractual obligations by the Defendants in relation to Spectrum Trading Agreements etc. Plaintiffs are telecom service providers.



3. It is stated in the application that Plaintiffs and Defendants are licensees as defined under Section 2(1)(e) of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) read with Section 4 of Indian Telegraph Act, 1885 with licences to establish, maintain and operate telegraphs across India and thus qualify as service providers by virtue of Section 2(1)(j) of the TRAI Act. Present dispute arises out of Defendants' alleged failure to take over active infrastructure equipment from the Plaintiffs in terms of the Term Sheet for the specified consideration, as part of composite spectrum trading deal. *Bona fide* believing that this Court was the appropriate forum, the present suit was filed in 2019.

4. It is further averred that at the time of instituting the suit, Plaintiffs were subject to insolvency proceedings under Insolvency and Bankruptcy Code, 2016 ('IBC') before NCLT, Mumbai. By orders dated 12.03.2018 and 19.03.2018, insolvency proceedings were commenced against the Plaintiffs under Section 10 of IBC due to inability of the Plaintiffs to pay off their debts. While the suit was at the stage of decision on the exemption application filed by the Plaintiffs to sue as an indigent person, Defendants filed an application being I.A. 1303/2021 under Order VII Rule 11(a) and (d) CPC for rejection of the plaint *inter alia* on the ground that this Court does not have jurisdiction to entertain the suit. It was stated in the application that only TDSAT has the jurisdiction to deal with disputes between two or more service providers. It is in light of this application raising objection to the jurisdiction of this Court that present application has been filed for withdrawal.

5. Mr. Salman Khurshid, learned Senior counsel appearing for the Plaintiffs submits that when the suit was instituted, it was under the belief



that this Court has jurisdiction to adjudicate the disputes, however, upon due diligence and legal advice, Plaintiffs have realized that the appropriate forum for raising the disputes is TDSAT inasmuch as under Section 14(a)(ii) of TRAI Act, TDSAT is conferred with exclusive jurisdiction to adjudicate any dispute between two or more service providers. It is urged that Defendants cannot raise any objection to the present application since they have themselves sought rejection of the plaint on the ground that this Court lacks jurisdiction and moreover, under Order XXIII Rule 1(1) CPC, Plaintiffs have the right to seek permission to withdraw the suit with leave to initiate fresh proceedings before the appropriate forum. Reliance is placed in this regard on the judgment of the Madras High Court in ***K.P. Selvah v. Atlee, C.R.P. (NPD) No.3331/2019, passed on 22.10.2019.***

6. Learned counsel for the Defendants opposes the application on the ground that present suit was initially instituted as a commercial suit but with malafide intent, an application was filed subsequently to sue as an indigent and once again, Plaintiffs take a different stand and seek to withdraw the suit to approach TDSAT. Plaintiffs ought to have exercised due diligence and take a legal advice before instituting the suit as it is clear from reading of Section 14(a)(ii) of TRAI Act that TDSAT has the exclusive jurisdiction to adjudicate disputes between two or more service providers. In this backdrop, it is urged that Court should not exercise discretion in favour of the Plaintiffs permitting them to withdraw with leave to institute fresh proceedings before TDSAT.

7. Heard learned Senior Counsel for the Plaintiffs and learned counsel for the Defendants.

8. Order XXIII Rule 1(1) CPC provides that at any time after, the



institution of the suit, Plaintiff may as against all or any of the Defendants abandon his suit or a part of his claim. Rule (3) provides that where the Court is satisfied that the suit must fail by reason of some formal defect or there are sufficient grounds for allowing the Plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the Plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit. It is a common ground between the parties that the disputes raised by the Plaintiffs in the present suit can only be adjudicated by TDSAT by virtue of Section 14(a)(ii) of TRAI Act since TDSAT has the exclusive jurisdiction to adjudicate any dispute between two or more service providers. Therefore, admittedly, this Court lacks the jurisdiction to entertain the present suit and conscious of this, Defendants filed an application under Order VII Rule 11 CPC.

9. In my view, there is no impediment in the Plaintiffs withdrawing this suit and taking recourse to filing fresh suit before TDSAT. Argument of the Defendants that Plaintiffs have been shifting stands by first filing a commercial suit and then seeking permission to sue an indigent or now seeking to withdraw the suit, cannot come in the way of the Plaintiffs withdrawing this suit when admittedly the disputes are amenable to the jurisdiction of TDSAT.

10. Accordingly, this application is allowed to the extent of permitting the Plaintiffs to withdraw the suit with leave to file fresh proceedings before the appropriate forum.

11. Application stands disposed of.

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12. The suit is disposed of as withdrawn with leave to the Plaintiffs to



institute fresh proceedings on the same cause of action before the appropriate forum. Insofar as the prayer for excluding the time period from date of filing of this suit till disposal of this application for purpose of computing the application in approaching the appropriate forum is concerned, this decision is left to the appropriate forum.

13. It is made clear that this Court has not expressed any opinion either on the merits of the disputes or on exclusion of limitation period under Section 14 of the Limitation Act, 1963.

14. All pending applications stand disposed of.

JYOTI SINGH, J

AUGUST 26, 2025
Ch/SS