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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 383/2017

UNION OF INDIA

..... Plaintiff

Through: Mr. Sanjay Jain, ASG with Mr. Sanjeev Narula, CGSC, Mr. Abhishek Ghai, Ms. Adrija Thakur, Ms. Rhea Verma and Mr. Anshuman Upadhyay, Advocates.

versus

VODAFONE GROUP PLC

UNITED KINGDOM & ANR

..... Defendants

Through: Mr. Harish N. Salve, Senior Advocate with Ms. Anuradha Dutt, Ms. Fereshte D. Sethna, Ms. Ekta Kapil, Ms. Gayatri Goswami, Mr. Haarish Fazili, Mr. Dhritiman Roy and Mr. S. Ghosh, Advocates.
Mr. Sumeet Kachwaha, Advocate as Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

26.10.2017

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I.A. 9460/2017

Today, after some preliminary hearing, Mr. Harish N. Salve, learned senior counsel for defendants has made the following submissions:-

1. *The Plaintiff claims that the invocation of the second arbitration (i.e. the UK Treaty Arbitration) is an abuse of process.*

2. *The Plaintiff raised this issue (as to abuse of process) before the Dutch Tribunal.*
3. *The Dutch Tribunal, by its order of 22nd August 2017, directed this issue (as to abuse of process) be raised before the UK Tribunal, when constituted.*
4. *At present, the parties' nominees stand appointed, and the nominee arbitrators are now due to appoint a Chairman. Once the process of appointment of the Chairman is completed, the UK Tribunal would stand constituted.*
5. *It is the Defendants' position that the first matter that the UK Tribunal may have to consider would relate to the application which may be moved by the Plaintiff/Republic of India seeking dismissal or permanent stay of the arbitration, on the ground of abuse of process.*
6. *Obviously, any such application would have to be heard at the threshold of the UK Treaty arbitration proceedings.*
7. *The options that will be open to the UK Treaty Tribunal are:-*
 - (a) *If it allows the challenge, to then close the arbitration proceeding and to grant a permanent stay; or,*
 - (b) *to reject the application.*
8. *If the application of the Plaintiff is rejected, the question of procedurally managing two arbitrations would arise.*

9. *The Defendants/Claimant in the arbitration would obviously be prepared to agree to any reasonable schedule arrived at with the consent of parties before that Tribunal, or order of the Tribunal by which duplication of effort is saved. This could be achieved in various ways, including scheduling the dates in the UK arbitration in a way whereby inconvenience and unnecessary expense to either side is avoided. These arrangements are fairly frequently arrived at, by consensus, in relation to BIT Tribunal proceedings.*
10. *As far as the UK Treaty arbitration is concerned, a separate notice of arbitration has been given by the Defendants. The Defendants are agreeable to the same arbitrators who constitute the Dutch Tribunal being appointed as the arbitrators of the second Tribunal i.e. the UK Tribunal so as to secure procedural efficiency and simplify coordination between the two arbitrations. Once the members of the tribunals are common, procedural management of both arbitrations becomes much easier. In order to achieve this, the Union of India would have to expressly agree that notwithstanding the stipulation in the Treaty they have no objection to Sir Franklin Berman chairing the Tribunal for the UK Treaty arbitration.*

Mr. Sanjay Jain, learned ASG for plaintiff prays for some time to obtain instructions.

In the interest of justice, adjourned to 17th November, 2017 at 3:00 p.m. for directions.

Keeping in view the aforesaid as well as the fact that the plaintiff and defendants have appointed an arbitrator each, this Court, without prejudice to the rights and contentions of the parties, clarifies that the representatives/counsel for parties are free to participate in the proceedings for appointment of a Presiding Arbitrator.

MANMOHAN, J

OCTOBER 26, 2017

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