

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 624/2006
CMP No. 809/2006

Date of decision:25.11.2011

M/s Kranti Hotel Pvt. Ltd. v. BSNL Ltd. & Ors.

CORAM:

MR. JUSTICE J.P. SINGH.

Appearing Counsel:

For Petitioner(s) : Mr. O.P.Thakur, Advocate.
For Respondent(s) : Mr. Ravinder Gupta, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : Yes/No |
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The petitioner, a private limited Company, questions the validity of Arbitration Award No. DE(MSC)/ARB/04-05/46 dated 06.07.2005 made by Ashwani Kumar Mahaur, the Arbitrator, whereby allowing Rebate of Rs.15642/- in Bill dated 01.04.1992, Rs.9146/- in Bill dated 1.02.1992 and Rs.15353/- in Bill dated 01.06.1992, the petitioner was directed to clear the arrears payable for Telephone Connection No. 431214.

The Arbitration Award proceeds on the premise that petitioner's Telephone Connection No.470525 was installed in the same premises where defaulter Telephone Connection No. 431214 was installed in the name of petitioner's Managing Director's father, Mr. Hardutt Sharma.

Finding that there was commonality of users in the two telephone connections, in terms of Rule 443 of the Indian

Telegraph Rules, 1951, the petitioner's Telephone connection No. 470525 was held liable to disconnection for non-payment of dues of telephone connection No. 431214 by the Arbitrator.

The plea projected by the petitioner that petitioner's Telephone Connection No. 470525 was installed in its Hotel premises at Rail Head Complex, Jammu and not in the same premises where petitioner's Managing Director's father was putting up, is not contested, by the respondents on facts.

Such being the case, when the two Telephone connections were not installed in the same premises, in that, one being at the Business premises of the petitioner-Company and the defaulter Telephone connection at the residence of petitioner's Managing Director's father, the provisions of Rule 443 of the Indian Telegraph Rules, 1951 could not, therefore, be pressed into service by the Arbitrator, for, there was no commonality of users in the two Telephone connections.

Even otherwise, there being no evidence that the subscriber of the Defaulter Telephone connection was dependent on the Company, the principle of commonality of users was not attracted in the facts and circumstances of the case.

The Award of Sh. Ashwani Kumar Mahaur, which proceeds on a wrong factual premise that the two Telephone connections were in the same premises, cannot, therefore, be sustained.

For all what has been said above, this Petition succeeds and is, accordingly, allowed, quashing Ashwani Kumar Mahaur's Award No. DE(MSC)/ARB/04-05/46 dated 06.07.2005.

(J.P. SINGH)
JUDGE

JAMMU
25.11.2011
Pawan Chopra