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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 194/2021 & I.As. 7594/2021, 7595/2021**

ATC TELECOM INFRASTRUCTURE
PRIVATE LIMITED

..... Petitioner

Through : Mr. Piyush Sharma, Mr.
Dhritiman Bhattacharyya and
Mr. Aditya N. Prasad,
Advocates.

versus

ORION SECURITY SOLUTIONS PRIVATE
LIMITED

..... Respondents

Through : Mr. Joby P. Verghese and Mr.
Sukant Vikram, Advocates.

+ **O.M.P.(I) (COMM.) 195/2021 & I.As. 7598/2021, 7599/2021**

ATC TELECOM INFRASTRUCTURE
PRIVATE LIMITED

..... Petitioner

Through : Mr. Piyush Sharma, Mr.
Dhritiman Bhattacharyya and
Mr. Aditya N. Prasad,
Advocates.

versus

ORION SECURITY SOLUTIONS PRIVATE
LIMITED

..... Respondents

Through : Mr. Joby P. Verghese and Mr.
Sukant Vikram, Advocates.

+ **O.M.P.(I) (COMM.) 193/2021 & I.As. 7585/2021, 7586/2021**

ORION SECURITY SOLUTIONS PRIVATE
LTD.

... Petitioner

Through : Mr. Joby P. Verghese and Mr.
Sukant Vikram, Advocates.

versus

ATC TELECOM INFRASTRUCTURE
PVT. LTD & ORS

.... Respondents

Through : Mr. Piyush Sharma, Mr.
Dhritiman Bhattacharyya and
Mr. Aditya N. Prasad,
Advocates.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (Oral)

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28.06.2021

(Video-Conferencing)

IA No. 7594/2021 in OMP (I) (COMM.) No. 194/2021 (for exemption)

IA No. 7598/2021 in OMP (I) (COMM.) No. 195/2021 (for exemption)

IA No. 7585/2021 in OMP (I) (COMM.) No. 193/2021 (for exemption)

1. Exemptions are allowed, subject to all just exceptions.
2. The applications stand disposed of accordingly.

IA No. 7595/2021 in OMP (I) (COMM.) No. 194/2021 (for exemption)

IA No. 7599/2021 in OMP (I) (COMM.) No. 195/2021 (for exemption)

IA No. 7586/2021 in OMP (I) (COMM.) No. 193/2021 (for exemption)

1. Subject to the petitioners filing notarised affidavits, process fees and the requisite welfare stamps, within a period of one week from

today, exemptions are granted for the present.

2. The applications stand disposed of accordingly.

OMP (I) (COMM.) No. 194/2021

OMP (I) (COMM.) No. 195/2021

OMP (I) (COMM.) No. 193/2021

1. These three petitions raise interconnected issues.

2. *Vide* agreements dated 12th February, 2019 and 23rd June, 2020, M/s Orion Security Solutions Private Limited (“Orion”, in short) agreed to provide operation and maintenance services and surveillance services in respect of the tower sites of M/s ATC Telecom Infrastructure Private Limited (“ATC” in short) in the state of Maharashtra.

3. Disputes have arisen between the parties in respect of these agreements.

4. The operation and maintenance services agreement dated 23rd June, 2020 admittedly expired by efflux of time on 30th June, 2021. The surveillance agreement dated 12th February, 2019 has been terminated by the respondent *vide* termination notice dated 25th May, 2021 w.e.f. 30th June, 2021. As such, both the agreements would come to an end on 30th June, 2021.

5. OMP (I) (COMM.) 194/2021 and 195/2021 have been filed by

ATC against Orion under Section 9 of the Arbitration and Conciliation Act, 1996 (“the 1996 Act” in short) for a direction to the respondent to hand over, to the petitioner, all the sites and operational assets of the petitioner and not to disrupt the operation of the sites/E-Communication Towers in any manner whatsoever.

6. OMP (I) (COMM.) No. 193/2021, on the other hand, has been filed by Orion against ATC, for restraining the ATC from encashing Bank Guarantees No. 003GT01192210001 for ₹ 25,00,891 and Bank Guarantee No. 003GT02192460003 for ₹ 35,05,900 /-, both issued by HDFC Bank Ltd. Greater Kailash-I and Bank Guarantee No. 316020706647-SP for ₹ 25,00,000/- issued by Standard Chartered Bank, New Delhi, furnished by Orion to ATC.

7. Of these three Bank Guarantees, Mr. Sharma, learned counsel for the petitioners, submits that Bank Guarantee No.003GT01192210001 for ₹ 25,00,891 and Bank Guarantee No. 003GT02192460003 for ₹ 35,05,900 /- have already been encashed and that Bank Guarantee No. 316020706647-SP, issued by the Standard Chartered Bank is not traceable. Even if it is traced, he makes a submission on behalf of his client that, subject to Orion handing over vacant and peaceful possession of the tower sites to ATC on or before 30th June, 2021 and ensuring that their personnel do not disrupt the petitioner from operating the said tower sites, his client would not invoke the third Bank Guarantee issued by Standard Chartered Bank.

8. Mr. Joby Verghese, learned Counsel for Orion is agreeable to this suggestion.

9. Learned Counsel for the parties also submit, *ad idem*, that an Arbitrator may be appointed by this Court to arbitrate all the disputes between the parties, so that a speedy resolution thereof is attained.

10. In view of these submissions, these petitions stand disposed of in the following terms and with the following directions:

(i) Orion shall hand over, to ATC, peaceful and vacant possession of the towers at the 425 sites forming subject matter of OMP (I) (Comm) 194/2021 and 26 sites forming subject matter of OMP (I) (Comm) 195/2021 on or before 30th June, 2021.

(ii) Orion shall ensure that they and their personnel do not interfere with the operation of the aforesaid telecom sites by ATC.

(iii) ATC shall stand injuncted from invoking Bank Guarantee No. 316020706647 issued by the Standard Chartered Bank, New Delhi. This shall, however, remain subject to the outcome of the orders/award to be passed by the learned Arbitrator in the arbitral proceedings.

(iv) No orders are being passed in respect of Bank Guarantee

No.003GT01192210001 for ₹ 25,00,891/- and Bank Guarantee No. 003GT02192460003 for ₹ 35,05,900/- as these Bank Guarantees are stated to already have been encashed by ATC and the prayer in that regard in OMP (I) (Comm) 193/2021 has been rendered infructuous. However, the rights of Orion, in respect of the said Bank Guarantees shall remain alive for being urged in the arbitral proceedings.

(v) The disputed amount involved in these proceedings is stated to be in excess of ₹ 17,00,00,000/-. Accordingly, this Court requests Hon'ble Ms Justice G. Rohini, former Chief Justice of this Court, to arbitrate on the disputes. The contact details of the learned Arbitrator are as under:

Mobile Nos.8527027027 & 8826000333

Email ID: justicegrohini@gmail.com

(vi) The Arbitrator shall file the requisite declaration under Section 12 of the Arbitration and Conciliation Act, 1996 within a week of entering on reference;

(vii) The learned Arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

11. This Court makes it clear that it has not expressed any opinion one way or the other on the disputes between the parties. All rights and contentions shall remain open to be urged in the arbitral

proceedings and the parties shall abide by the outcome thereof.

12. With these directions all the three petitions stand disposed of.

**C. HARI SHANKAR, J.
(VACATION JUDGE)**

JUNE 28, 2021/j

