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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(COMM) 839/2022 & I.A. 5739/2023, I.A. 1358/2025**

INTERNATIONAL ENGINEERS AND PROJECTS CONSULTANTS LTD .....Plaintiff

Through: Sh. Mahabir Singh, Sr. Advocate with Sh. Himanshu Mahajan and Sh. Veerender Singh, Advs.

versus

MAHANAGAR TELEPHONE NIGAM LIMITED .....Defendant

Through: Mr. Saket Sikri, Mr. Ajay Pal Singh Kular, Mr. Arun Sanwal, Mr. Prakhar Khanna, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **22.07.2025**

I.A. 34749/2024

1. This is an application filed under section 151 CPC, 1908 seeking lien/charge on the bank account of the defendant till the present suit is finally decided and the plaintiff gets execution of the Award dated 23.12.2020.

2. The fact of the case are that the plaintiff is an Award holder for a sum of about Rs. 7.90 crores with interest which, according to the learned senior counsel for the plaintiff would be about Rs. 11 crores.

3. Since the Award was passed under the Arbitration and Conciliation Act, 1940 (***"1940 Act"***), the plaintiff has filed the abovesaid suit under section 17 of 1940 Act for making the Award a decree of the Court.

4. The defendant has filed objections under section 30 and 33 of 1940 Act which is pending adjudication.

5. During the pendency of the present proceedings, the plaintiff has filed the present application seeking lien/charge based on the following averments made in the present application. Paragraphs 3 and 4 of the present application read as under: -

> *"3.That it has transpired and come to the knowledge of the Plaintiff that the Government of India is considering to shut down the Defendant Company and merge its operations with Bharat Sanchar Nigam Limited. Further, the Department of Telecommunication (DoT), Government of India, has identified around 600 land parcels and buildings owned by Bharat Sanchar Nigam Limited (BSNL) and the Defendant Company for direct sale to government departments, public sector undertakings, and government organizations. The Government of India has earmarked over 100 properties of the Defendant for direct sale via auction, including 48 properties in, Delhi and 52 in Maharashtra. True copy of news clippings downloaded from the website of www.msn.com and www.ndtvprofit.com are annexed herewith and marked as Annexure P-l (Colly).*
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> *4. That Plaintiff has received newspaper reports from leading papers such as NDTV Profit and Business Standard that Defendant MTNL cannot even pay interest on government-guaranteed bonds of Rs 2,480 crores due on July 20th, 2024. The Defendant MTNL had also defaulted on the interest on a loan worth Rs 329 crores earlier this, year. The true copy of news clippings downloaded from, the website of the Indian Express, www.reuters.com and the Economic Times is annexed herewith and marked as Annexure P-2 (Colly)."*

6. The defendant has filed its reply to the present application wherein the above quoted paragraphs have been replied as under:-

"3. That the contents of the corresponding paragraph are wrong and denied. The allegation of Plaintiff that the Government of India is considering to shut down the Defendant is baseless and misconceived. No such decision is taken by the Government of India as on date.

That proposal to sell MTNL's Land Building is an Asset monetization exercise being undertaken by MTNL in respect of its properties considered surplus i.e. more than its operational requirement. This is owing to the fact that mass scale retirement of employees in last 10 years either on superannuation or under VRS, process automation, digitization of records, induction of new technology Exchange and Network equipment warranting much lesser space resulted in vacation of large part of its Estate.

That further, any sale proceeds from the sale of the properties will only be utilized to pay off its debts only and improving MTNL's liquidity position having an impact on improving its operational efficiency as well. The MSN media report filed by the plaintiff, itself reporting that GOI has implemented several package in 2019 and 2022 for a sum of Rs. 69021 crores and Rs. 1.69 lakhs crores. MTNL being a government company and is operating in strategic sector is constantly being supported by Government of India.

4.That the contents of the corresponding paragraph are wrong and denied. In this regard, it is intimated even similar Media Reports are quoting Telecom Minister, assuming that there will be no default and Govt. will pay Bond interest Dues of MTNL."

7. Along with the early hearing applications, the plaintiff has filed copy of the 38th Annual Report (2023-24), wherein the head "Market Competition and Risk" is reproduced below:-

MANAGEMNET AND DISCUSSION ANALYSIS REPORT
[ENTERPRISE RISK ASSESSMENT AND ITS MANAGEMENT & MINIMIZATION POLICY FOR THE FINANCIAL YEAR 2023-24]

1. MARKET / COMPETITION RISK:

Sl. No.	CAUSES OF RISK	RISK MINIMIZATION & MITIGATION PLAN
a.	The market of MTNL is limited to Mumbai and Delhi which restricts its ability to take advantage of growth in Group B cities. Private TSPs operating on a Pan India basis are competing with MTNL for basic as well as cellular services. The Private TSPs have the latest state of the art telecommunications infrastructure through which they are offering low-cost 4G mobile, fixed Wireline telephony as well as FTTH services.	As per the Govt decision, BSNL will provide all telecom services in Delhi and Mumbai through leasing of operational assets or other appropriate models. With operations by BSNL in Delhi/ Mumbai, MTNL would be left with land/building assets which it will continue to monetize to discharge its loan liabilities. To achieve the above directive an MoU has been signed between MTNL & BSNL on 31.08.2023 regarding operational synergy.
b.	Telecom is a rapidly evolving technology driven industry and need for constant up-gradation of the network. The existing network of MTNL has become obsolete. The heavy debt burden and the recurring losses during past 12 years have resulted in a financial crunch, making MTNL unable to invest in the modernization, up-gradation and expansion of its network.	Due to poor financial condition MTNL was not able to invest in its network expansion and upgradation. The Union Cabinet in its meeting held on 27.07.2022 considered and approved the Sanctioning of capex of Rs. 22,471 Cr (in FY 2022-23 to FY 25-26) as equity infusion in BSNL. This included projected requirement of MTNL of Rs. 1,851 Cr in Delhi/Mumbai also for three years (FY 2022-23 to FY 2024-25). As per above, most of the procurement in MTNL is now being done through BSNL tenders by placing add on order or by including MTNL's requirement in the BSNL's Tender. Recently, MTNL has made procurement for the upgradation of its MPLS, firewalls and broadband network. In addition to above optical fiber cables, batteries and power plants have also been purchased through BSNL Tenders to strengthen the network.
c.	With the popularization of 4G services, MTNL is facing tough competition in Fixed Line and Broadband service segment. This has resulted into churn of MTNL's landline as well as Broadband customers to 4G Services of competitors.	GoI in its cabinet meeting held on 23-10-2019 had approved the proposal of administrative allotment of spectrum for 4G services to BSNL and MTNL. In a modification to this decision, the Group of Ministers (GoM) constituted on the matter of "Revival of BSNL and MTNL" approved allocation of 4G spectrum to BSNL in Delhi and Mumbai in place of MTNL in its meeting held on dated 21.12.2020.
	MTNL is offering Broadband Internet at 2-8 Mbps Speed, predominantly on ADSL2+ technology on Copper Wire. Though FTTH Services are also being offered with speed up to 1Gbp. In wireless segment MTNL is providing only 2G/3G service with limited coverage and capacity this has resulted in huge churn of wireless subscribers with negligible demand from only low value customers.	As per decision of the Union Government, with the allotment of the spectrum for providing 4G services to BSNL, the 4G services in MTNL area of Delhi and Mumbai will also be launched by BSNL. For this purpose BSNL has placed POs for the rolling out 4G network in Delhi & Mumbai Area with 3000 and 2000 E Node Bs sites respectively.

8. Due to poor financial condition, MTNL was not able to invest in its net worth expansion and upgradation. In addition, there are also reports of Economic Times showing that the defendant has defaulted in payment of its loan obligations to the tune of Rs. 5726 crores.

9. Mr. Sikri, learned counsel for the defendant, at the outset, states that even if the application is treated as an application under section 18 of 1940 Act, the plaintiff must show actions on the part of the defendant to defeat delay or obstruct execution of decree that may be passed against the plaintiff. He states that there are no such averments.

10. Additionally, he also relies on the judgment passed by a co-ordinate bench of this Court in ***"Lanco Infratech Ltd. v. Hindustan Construction Company Ltd."*** ***[(2016) SCC OnLine Del 5365]*** and more particularly on paragraphs 35 and 36 which read as under:-

> *"35. It is also clear from the impugned order that the AT failed to come to any conclusion even prima facie that Lanco was about to dispose of or remove whole or part of its assets from the local limits of the AT which was one of the contentions warranting exercise of power under Order XXXVIII Rule 5 CPC the underlying principle of which, as explained in the decisions examined hereinbefore, apply to Section 17 of the Act as it stood prior to the amendment with effect from 23rd October, 2015.*
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> *36. Learned counsel for HCCL sought to refer to the letter dated 10th August, 2015 written by Lanco Infra Tech Ltd. to NSEIL where it was stated that "as a part of the process to consolidate business and to reduce debt, Lanco Group has undertaken sale of some of its assets and bringing in strategic investors in others." This one sentence in the letter could not by itself lead to an inference that Lanco was about to dispose of whole or part of its property with an intention to obstruct or delay the award that might be passed against it. It was overlooked by the AT that the above move was part of the SDR for which the lenders' approval was mandatory. Consequently, the Court is unable to draw even a prima facie conclusion, on the basis of the said letter, that the essential prerequisites of Order XXXVIII Rule 5 CPC stand*

satisfied.”

11. I have heard learned counsel for the parties.

12. In the present case, admittedly, the facts are that there is an Award in favour of the plaintiff which is to the tune of about Rs. 11 crores. The Annual Report of the defendant itself states that the defendant is unable to pay due to its poor financial conditions and even the Economic Times shows default of loan of Rs. 5726 crores by the defendant. The reply of the defendant reproduced above also shows that the defendant is in the process of monetising its assets. The combination of the aforesaid facts, *prima facie,* indicates that the defendant is not in a sound financial condition.

13. The parameters of Order XXXVIII Rule 5 of CPC are satisfied in the present case, as there exists a strong likelihood that if no pre-decretal attachment is granted at this stage, the defendant may alienate, dispose of, or otherwise encumber its assets in the interim. Such actions would frustrate the execution of the Award as a decree. The very purpose of the said Rule 5 is to prevent the judgment-debtor from defeating the realization of the decree by disposing of its property.

14. For the said reasons, the application is allowed and the defendant is directed to keep a property of Rs. 11 crores unencumbered till the next date of hearing.

15. In case, all the immovable properties of the defendant are unencumbered, the defendant shall create a second charge of Rs. 11 crores in favour of the plaintiff subject to the charge of the financial institutions.

16. Accordingly, the application is disposed of.

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17. List the petition for hearing on 29.10.2025.

JASMEET SINGH, J

JULY 22, 2025/ (MS)