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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 27, 2009

Date of Order: May 06, 2009

+ OMP 326/2008

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06.05.2009

M/s Harjee Engineering Works P. Ltd.

...Petitioner

Through : Mr. Hem C. Vashisht and Ms. Jyoti Chatterjeet, Advocates

Versus

M/s Hindustan Steel Works Ltd. & Ors.

...Respondents

Through: Nemo

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This petition under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") has been filed by the petitioner praying inter alia that this Court should pass an interim injunction restraining respondent No.3 bank from releasing the amount in favour of respondent No.1 in respect of the following bank guarantees :

1. Bank Guarantee No.97/05 dated 13th January 2006 of Rs.47,00,000/-.
2. Bank Guarantee No.96/05 dated 13th January 2006 for Rs.58,00,000/-
3. Bank Guarantee No.98/05 dated 13th January 2006 of Rs.25,00,000/-.

(All drawn on Punjab & Sind Bank, Hemkunt Colony Branch, New Delhi).

2. It is submitted by petitioner that the above bank guarantees were not invoked by respondent No.1 as per the terms and conditions of the bank

guarantee. The contract of the petitioner with respondent No.1 was cancelled on 1st September 2007. Each of bank guarantees provided that it could be invoked within 90 days of cancellation of contract only. The invocation of Bank Guarantees done by the petitioner beyond 90 days was bad in law.

3. Respondent has taken a preliminary objection that this petition under Section 9 of the Arbitration & Conciliation Act, 1996 was not maintainable as there was no arbitration agreement between the parties and this Court even otherwise has no territorial jurisdiction as only Courts at Kolkata would have the jurisdiction in view of the MoU entered into between the parties on 12th April 2004. No cause of action has arisen in Delhi. The contract between the petitioner and the respondent No.1 was executed at Kolkata, West Bengal. The work was to be executed at Kahalgaon, STP, District Bhagalpur, Bihar. The letter for encashment was issued from Kahalgaon, Bihar.

4. A perusal of the entire petition of the petitioner would show that the petitioner has not pleaded the existence of an arbitration agreement in the petition. Nor it is pleaded as to when the written arbitration agreement was signed between the parties. A copy of the arbitration agreement has also not been attached with the instant petition. Neither a copy of the contract entered into between petitioner and respondent No.1 has also been attached with the petition. What has been attached with the petition is awarding of contract by NTPC to respondent No.1 i.e. Hindustan Steel Works Construction Limited. This contract is not between the petitioner and respondent No.1 and even if an arbitration clause is there in the contract between NTPC and Respondent No.1, the same does not bind the petitioner and respondent No.1. Respondents No.2 and 3 in this case are unnecessary parties as it is not

even the case of the petitioner that he had any contract with respondent No.2 and the arbitration clause with respondent No.2 and 3. The Bank Guarantee contract between the bank and respondent No.1 is an independent contract. The dispute resolution provision given in the contract between respondent No.1 and 2 reads as under:

“22.1.0 It is specifically agreed that all disputes or differences whatsoever, arising out of this Contract between the parties whether during the progress of the work or after its completion, shall be settled in accordance with the stipulations of Memorandum No.3/5/93-PMA dated 30/06/93 of Govt. of India, Ministry of Industry, Deptt. Of Public Enterprises”

5. Obviously, this provision of dispute resolution between the Government enterprises in accordance with the stipulations of Ministry of Industry regarding public enterprises cannot govern the disputes of petitioner with respondent No.1.

6. I find that the petition does not disclose existence of an arbitration agreement between the parties and the same is liable to be dismissed and is hereby dismissed.

May 06, 2009
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SHIV NARAYAN DHINGRA J.