

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

+

O.M.P. 1094/2014

%

Judgement pronounced on: 10.09.2014

CHITTORGARH KOTA RAILWAY PVT LTD Petitioner

Through: Ms.Indira Marla, Advocate alongwith
Mr.Rajeev Sharma, Advocate.
versus

NATIONAL HIGHWAY AUTHORITY OF INDIA AND ANR

..... Respondents

Through: Ms.Meenakshi Sood, Advocate
alongwith Mr.Mukesh Verma and
Ms.Tanu Priya Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

IA No. 17534/2014 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P. 1094/2014

1. The present petition has been filed by the petitioner under Section 9 of the Arbitration and the Conciliation Act, 1996 (hereinafter referred to as 'the Act') with a prayer, interalia, for passing an ex-parte order thereby restraining the respondent no.1 from claiming the transfer of alleged damages of Rs.54.79 lacs from the Escrow Account held with the respondent no.2 or alternatively to restrain the respondent no.2 from releasing the amount of the alleged damages of Rs.54.79 lacs from the

Escrow Account held by it in favour of respondent no.1.

2. The facts of the case are that the Government of India has entrusted the NHAI/respondent no.1 as Authority for the development, maintenance and management of National Highways. In view of this, respondent no.1 had invited bids with commercial terms and conditions operation, maintaining and transfer of National Highways, Chittorgarh-Kota Section in State of Rajasthan. Respondent no.1 had accepted the bids of several other constructions Engineers and contractors and petitioner made similar request to the respondent authority.

3. Petitioner, thereafter, incorporated itself as a Limited Liability Company and further entered into Concession Agreement dated 20.01.2011 with the respondent no.1 for Operation, Maintenance and transfer (OMT) of Chittorgarh-Kota Section in State of Rajasthan.

4. Under the terms of the contract, the petitioner was entitled to exclusively collect appropriate fee from the users and also was liable to maintain the existing road.

5. Thereafter, a contract dated 02.07.2012 was signed with Sai Consultancy to carry on regular inspection at the sites in view of the Concession Agreement.

6. Learned counsel for the petitioner has come up before this court seeking restraining order against respondent no.2 from releasing Rs.54.79 lacs from the escrow account in favour of respondent no.1. It is submitted that the dispute has arisen between the parties as an amount of Rs.54.79 lacs was claimed as damages as the grounds of defects. It is submitted that there was inherent defects in the stretch of the road when the Concession Agreement was given to the petitioner which were due to the poor

construction of the road by the previous Contractor.

7. It is submitted that the petitioner had not faulted in maintenance and the imposition of penalty amount has been wrong and that he has already invoked the clause 36.1 and the matter is still pending with the engineer with Sai Consultancy. It is submitted that till the matter is finally adjudicated upon either by Sai Consultancy or by the other authorities in terms of article 36.2 of the agreement, the bank be restrained from releasing the said money.

8. Learned counsel for the respondent, who is present on advance notice, has submitted that the petitioner has concealed a very vital document. It is submitted that at the time of execution of agreement between the parties, there was joint inspection of the site and memorandum of inventory of site was prepared, wherein it was clearly noted that the stretch was free from any damage or fault and that no inferior or sub-standard quality of construction was found in existence at the time of joint inspection.

9. Learned counsel for the respondents has also pointed out that the petitioner has intentionally not placed on record the copy of the clause 15.8 which speaks about the entitlement of the respondent for damages in case of breach of the maintenance obligations. Learned counsel for the respondents has also submitted that the respondent has been writing to the petitioner, pointing out the defects in the maintenance of the road by petitioner and there are number of such letters which the petitioner has intentionally concealed.

10. Learned counsel for the petitioner has not offered any explanation as to why all these main documents have been concealed from the notice of this court.

11. It is further argued by learned Counsel for the respondent since the

petitioner has concealed material documents intentionally, shows that the petitioner has not come to the court with clean hands.

12. It is argued that Injunction is an equitable relief and the petitioner, who is guilty of concealing the material documents and facts from the knowledge of this court is not equitable relief. It is submitted that there was a joint inspection of the site at the time when the contract was entered into between the parties and a certificate to this fact had been signed by both the parties whereby the petitioner had ensured that the stretch was not suffering from any apparent damage.

13. It is further submitted that Respondent No.1 had been issuing notices starting from May 2013 pointing out the several defects in the maintenance which were very apparent on the face on inspection of the road. It was also argued that because the road was not properly maintained there was an agitation among the local residents as well.

14. It is further submitted that the petitioner has no prima facie case in his favour and petitioner is liable to pay the damages. It is only the quantum of the damages which can be the matter of the dispute. It is also submitted that since it is only damages, the petitioner is not going to suffer any irreparable loss or injury from the refusal of the grant of the stay.

15. On this, it is submitted on behalf of the petitioner that the petitioner is already depositing a total sum of Rs.2,00,00,000/- by way of toll collected every day and every day collection was deposited in the escrow account and the agreement between the parties is not yet terminated. The learned counsel for the respondent has conceded that the agreement with the petitioner has not yet been terminated.

16. During the course of arguments Learned Counsel for the Petitioner

has conceded that they are liable to pay the damages for the default and the damages could not be zero but only the amount is to be determined. During the conciliation, learned counsel for the respondent submitted that the date fixed for the conciliation meeting is scheduled for 18.09.2014.

17. Heard.

18. It is a settled law that the grant of an injunction is an equitable relief. Party seeking equitable relief is expected to come to the court with clean hands and put on record all the relevant facts and documents. It is also apparent from the facts of this case that the material documents showing the condition of the stretch for which the maintenance was awarded to the petitioner at the time of entering into the contract was a vital document and also the letters written by the respondent pointing out the defects in the maintenance of the stretch were also vital documents to assess the existence of prima facie case in favour of the petitioner. Since the petitioner has concealed these documents it clearly shows that petitioner is himself aware that he would not have prima facie case to obtain the equitable relief if these documents are placed on record.

19. As regards the damages are concerned, it is clear that it just relates to payment of some money and which cannot be said to cause irreparable loss to the petitioner.

20. In view of these, I find no ground to grant any relief to the petitioner, hence the petition is hereby dismissed.

DEEPA SHARMA, J

SEPTEMBER 10, 2014/sapna