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

Date of Reserve: April, 16 2009  
Date of Order: April 22, 2009

**+OMP 304/2007 & IA NO.4917/2009**

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**22.04.2009**

**MC-Rotem-Melco Consortium**

**...Petitioner**

Through : Mr. Rajiv Nayyar, Sr. Adv. with Mr. Manu Nair, Mr. Siddharth Datta and Mr. Arun Mohan, Advocates

Versus

**M/s Delhi Metro Rail Corporation Ltd.**

**...Respondent**

Through: Mr. Rakesh Agarwal, Advocate

**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. On 4<sup>th</sup> April 2007, the Arbitral Tribunal in this case passed an interim award and directed the parties to appear before it on 8<sup>th</sup> October 2007 at 5.30 pm for adjudicating remaining issue that was to be decided after rendition of accounts by Claimant. The petitioner has challenged this interim award by filing a petition under Section 34 of the Arbitration & Conciliation Act, 1996. The arbitral record was sent back to the Arbitrator for concluding the arbitral proceedings and for giving final award. Counsel for the petitioner has raised objections against continuing of arbitral proceedings further. It is submitted that although the award was termed as an interim award but the said award had rejected all the claims of the petitioner and was a final award as far as petitioner was concerned. The Arbitrator has allowed some of the claims of

the respondent and while allowing the claims of the respondent, in order to evaluating exact value of the claim made in favour of the respondent, , the Arbitrator has to go in the accounts. This would not be necessary if the petition of the petitioner is allowed and the claim awarded to the respondent is set aside. It is submitted that in view of Section 36 of the said Act, it was not permissible for the Arbitrator to proceed further.

2. I consider that this argument of the counsel for the petitioner is misconceived. The petitioner has a right to challenge the interim award but only because the petitioner has challenged the interim award, the arbitral proceedings for deciding leftover questions, does not come to stay. Filing an application under Section 34 challenging an interim award would only result into the non-implementation of the interim award. The determination of the remaining questions by the Arbitrator does not amount to implementation of the award. Section 36 of the Arbitration & Conciliation Act, 1996 prohibits enforcement of the award till the pendency of the application under Section 34. It does not prohibit the Arbitrator from proceeded further and also from concluding the arbitral proceedings.

3. The objection raised by the petitioner against the Arbitrator's proceeding further with the arbitration and passing a final award is not tenable. It is made clear that the Arbitral Tribunal is at liberty to proceed further and to conclude the proceedings and give a final award.

**April 22, 2009**  
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**SHIV NARAYAN DHINGRA J.**