

\$~* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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ARB.A. 13/2015

EKTA SHAKTI FOUNDATION

..... Appellant

Through: Mr. N.N. Aggarwal with

Mr. Rohit Gandhi & Mr. Varun Garg, Advocates.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. D.P. Kaushik, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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27.02.2015

I.A. 4111 of 2015 (for exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

Arb.A. No. 13 of 2015

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act') is directed against an order dated 12th January 2015 passed by the sole Arbitrator declining to grant interim relief in an application filed by the Appellant under Section 17 of the Act.

2. A contract had been entered into between the Appellant and the Government of National Capital Territory of Delhi (GNCTD) on 15th March

2013 for supply of mid-day meals to 40 schools. A work order dated 19th March 2013 was issued pursuant to the said contract.

3. By a subsequent order dated 29th October 2013, the Respondent cancelled the contract.

4. Aggrieved by the said cancellation, the Appellant first filed Writ Petition (C) No. 8189 of 2013 during the hearing of which the Appellant sought to withdraw the said petition with liberty to initiate arbitration proceedings in terms of Clause 33 of the contract. The writ petition was then dismissed as withdrawn.

5. Before the learned sole Arbitrator, the Appellant filed an application under Section 17 of the Act seeking an interim stay of the cancellation order dated 29th October 2013. By the impugned order dated 12th January 2015 the learned Arbitrator formed the opinion that the questions raised in the application were mixed questions of fact and law. The learned Arbitrator observed that the said questions are kept open and will be considered at the time of final adjudication after recording of evidence of the parties. The

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application was accordingly disposed of.

6. This Court has heard the submissions of Mr. N.N. Aggarwal, learned counsel, appearing for the Appellant and Mr. D.P. Kaushik, learned counsel for the Respondent GNCTD.

7. The Court is of the considered view that the interim relief being sought by the Appellant was not capable of being granted by the sole Arbitrator in an application under Section 17 of the Act. In other words, there could not be a stay of the operation of an order passed by the Respondent No. 1 terminating the contract. Even if the Appellant ultimately establishes after evidence is led that the termination was illegal, the remedy of the Appellant was to seek damages for such illegal termination. By an interim order, there cannot be a stay of the termination of the contract.

8. Consequently, no interference is called for with the impugned order of the learned Arbitrator. It is clarified that all the contentions of the Appellant as regards the validity of the order of termination of contract, are left open for decision in the arbitral proceedings.

9. The appeal is accordingly dismissed.



S. MURALIDHAR, J.

FEBRUARY 27, 2015

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