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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No.3152/2011

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5th November, 2015

METSO MINERALS (INDIA) PVT LTD Plaintiff
Through Mr. Gaurav Bhardwaj, Advocate

versus

M/S SHIVGIRI ASSOCIATES & ORS Defendants
Through Mr. Madhav Khurana, Advocate with
Ms. Foram Kamdar, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

I.A. No.5033/2012 (by defendants for condonation of delay of 17 days)

1. In this suit which is under Order XXXVII of the Code of Civil Procedure, 1908, the defendants did not file a formal appearance but filed vakalatnama of their Advocate, with an admitted delay of 17 days. It is a settled law that filing of vakalatnama will amount to appearance inasmuch as there is no mandate and compulsory form which must be filed as an appearance in the suit. Accordingly, appearance of the defendants through their counsel by filing vakalatnama along with a delay of 17 days is taken as

an appearance in the suit, with consent of the plaintiff, but subject to payment of costs of Rs.15,000/- to the plaintiff to be paid within a period of two weeks from today. In case costs are not paid within two weeks thereafter costs of Rs.20,000/- will be paid.

I.A. stands disposed of accordingly.

I.A. No.5037/2012 (by defendants u/O VIII Rule 1 of the Arbitration and Conciliation Act, 1996) & CS(OS) No.3152/2011

2. This is an application filed by the defendants that the disputes in the present suit cannot be tried by this Court and have to be referred to Arbitration in terms of the Arbitration Clauses in the two Agreements dated 01.03.2009. Admittedly, in the Agreements dated 01.03.2009, and which are referred by the plaintiff in the plaint itself and which Agreements are filed by the plaintiff itself, there is a Clause (10) which provides for disputes between the parties which are the subject matter of the two Agreements to be decided by the Arbitration.

3. Admittedly, the disputes in the present suit arise with respect to cheques issued by the defendants for payments claimed to be due to the

plaintiff under the subject contracts dated 01.03.2009, and therefore, disputes in the present suit would be covered by the Arbitration Clause.

4. Counsel for the plaintiff sought to argue that there is no dispute which is required to be referred to the Arbitration as defendants have admitted payment of the dues of the plaintiff in terms of the letter of the defendants dated 13.05.2010, however, this argument does not impress this Court inasmuch as the defendant are contesting the territorial jurisdiction of this Court as also the claim on merits. Once this Court has no territorial jurisdiction, there does not arise any issue of holding that there are no disputes capable of being referred to Arbitration. Also, the letter dated 13.05.2010 is only an evidentiary admission and is not final in view of Section 21 of the Evidence Act, 1872 and the defendants are entitled by filing their defences in the Arbitration proceedings to show other facts and circumstances that they are not liable in spite of what is stated by the plaintiff to be admission of liability by the letter dated 13.05.2010. Issues of merits have to be decided in the competent forum and not by this Court once there is an Arbitration Clause which requires parties to get their disputes decided by Arbitration. Section 14(2) of the Specific Relief Act, 1963

specifically bars filing of a suit which is the subject matter of the Arbitration Agreement. Section 14(2) of the Specific Relief Act reads as under:-

“14. Contracts not specifically enforceable.—

(1) xxx xxx xxx

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

xxx xxx xxx”

5. In view of the above, since there is an admitted Arbitration Clause in the Agreement between the parties, this suit is not maintainable in view of Section 14(2) of the Specific Relief Act. Parties are directed to get their disputes resolved through Arbitration.

6. Suit is dismissed. Parties are left to bear their own costs.

NOVEMBER 05, 2015
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VALMIKI J. MEHTA, J