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

\+ **O.M.P.(I) 377/2015**

% **28th July, 2015**

HEJIAN SOLIDKEY PETROLEUM MACHINERY CO. LTD
..... Petitioner
Through Mr. Deepak Dhingra, Advocate with Mr. Pushpendra Singh and Mr. Atul Parmar, Advocates

versus

INDIAN OIL CORPORATION LTD ..... Respondent
Through Mr. V.M. Vohra, Advocate with Mr. Siris Kumar, Advocate

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.782/2015

1. Counsel for the caveator appears.

Caveat accordingly stands discharged.

O.M.P.(I) 377/2015 & I.A. No.15004/2015 (stay)

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in which the following reliefs are prayed:-

"A. Pass necessary orders during pendency of the present petition as prayed here under:-

i. Stay/suspend the impugned letter dated 09.07.2015 bearing no.PLCC/SMPL-DBL/CL/1315 with immediate effect.

ii. Pass an order restraining the respondent from dispossessing the petitioner from two sites which are in occupation of the petitioner namely Dondi River site and Nala + SH25 site

iii. Pass necessary orders directing the respondent not to hinder the petitioner to retrieve the line pipes belonging to the respondent and the Drill Pipes along with other tools owned by the Petitioner from the tunnel constructed at Dondi River site in two weeks time.

B. Pass necessary orders for interim measures and stay the operation with immediate effect and suspend the impugned letter of termination dated 09.07.2015 bearing no.PLCC/SMPL-DBL/CL/1315 issued by the respondent till commencement, during arbitration proceedings and till arbitration is over;

C. Pass necessary orders directing the respondents not to hinder and allow the petitioner to complete remaining work under way at the Dondi River site which are almost 95% complete and at Nala + SH25 site where petitioner is mobilized within total ten weeks time after retrieval of pipes; and

D. Pass such further and/or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. Disputes exist between the parties with respect to the Contract awarded by the respondent to the petitioner dated 07.03.2014. The Contract was for laying down oil pipelines and details of which are given in para 5 of

the petition. The petitioner is aggrieved by the impugned termination of the Contract in terms of the letter dated 09.07.2015 issued by the respondent.

4. Law is now well settled that a contract which cannot be specifically enforced, in such cases injunction cannot be granted. This is clear from a reading of Section 14 (1) of the Specific Relief Act, 1963 read with Section 41 (e) of the said Act and which provisions read as under:-

> "**14. Contracts not specifically enforceable.**—(1) The following contracts cannot be specifically enforced, namely:—
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> (a) a contract for the non-performance of which compensation in money is an adequate relief;
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> (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
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> (c) a contract which is in its nature determinable;
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> (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.
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> **41. Injunction when refused.**—An injunction cannot be granted-
>
> xxx xxx xxx
>
> (e) to prevent the breach of a contract the performance of which would not be specifically enforced;"

5. A reading of the aforesaid provisions shows that where compensation in money is an adequate relief, then such a contract cannot be specifically

enforced. In a contract, such as the present, and in all other similar contracts, petitioner incurs expenditure as a whole and ultimately enters into a contract for a profit margin viz compensation in money. Therefore compensation in money is an adequate relief to the petitioner and once the compensation in money is an adequate relief, and which will be payable to the petitioner in case the petitioner succeeds in proving breach of contract by the respondent under Section 73 of the Indian Contract Act, 1872, such a contract cannot be specifically enforced and therefore even injunction as prayed for cannot be granted, in view of the aforesaid provisions of Sections 14(1) and 41(e) of the Specific Relief Act.

6. It may also be noted that under sub-Sections (b) and (d) of Section 14 of the Specific Relief Act, a contract which runs into minute or numerous details and a contract in which there would require a continuous supervision by the court, even such contracts cannot be specifically enforced, and once such contracts cannot be specifically enforced, no injunction can be granted. The subject contract will also fall within the ambit of Section 14 (b) and (d) of the Specific Relief Act.

7. Learned counsel for the petitioner has cited an *ex parte* Order dated 28.02.2014 in ***O.M.P. No. 260/2014*** titled as ***Mayar Health Resorts Ltd Vs.***

Indian Tourism Development Corporation, to argue that injunction should be granted, however, I am of the opinion that *ex parte* orders do not lay down any ratio for courts to follow and more so the order which is relied upon does not refer to Sections 14 and 41 of the Specific Relief Act. Also, the reliance placed by the petitioner upon Order dated 22.04.2015 in ***O.M.P. No. 302/2014*** titled as ***Gwalior-Jhansi Expressway Limited Vs. National Highway Authority of India*** is not applicable as it does not lay down any ratio because this Order is just a five line order confirming the interim orders.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed.

JULY 28, 2015 **VALMIKI J. MEHTA, J.**
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