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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1062/2013**
M/S PREMIER SERVICES Plaintiff
Through: Mr. Shivanath Mahanta, Advocate

versus

M/S NAGARJUNA CONSTRUCTION COMPANY LTD Defendant
Through: Ms. Priya Kumar, Advocate with
Mr. Adhish Srivastava and Ms. Tanya Tiwari,
Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
% **26.08.2016**

I.A. 21565/2015 (by the defendant for recall of the order dated 20.01.2015)

1. The present application has been filed by the defendant praying inter alia for recalling the order dated 20.01.2015.
2. Though a reply in opposition to the application has been filed, the same is lying under objections. Learned counsel for the defendant submits that vide order dated 20.01.2015, the defendant was directed to file its balance sheets for the years 2009-10 and 2010-11, alongwith the supporting documents furnished to their auditors/accountants, while preparing the said balance sheets reflecting the list of creditors and the amounts due and payable. She states that such a direction would be premature without first examining the pleas of the defendant taken in I.A. 20337/2013, an *CS(OS) 1062/2013*

application filed under Order VII Rule 11 CPC and Section 8 of the Arbitration and Conciliation Act.

3. Learned counsel for the defendant concedes that it was erroneous on the part of the defendant to have combined two sets of reliefs in one application, particularly, keeping in mind the fact that if the application under Order VII Rule 11 CPC is allowed, the plaintiff would be liable to be rejected as not maintainable, whereas under Section 8 of the Arbitration and Conciliation Act, the defendant can only seek directions that the plaintiff must approach the learned Arbitrator for settling their *inter se* disputes.

4. Counsel for the plaintiff states that the scope of the arbitration clause contained in the contract governing the parties is fairly limited and is confined to technical/contractual disputes, whereas in the present suit, the plaintiff is seeking recovery of a specified amount alongwith interest from the defendant on the ground that the same are admitted amounts, the defendant/company having already issued TDS certificates against the bills raised by the plaintiff for the said amounts.

5. Having regard to the fact that the counsel for the defendant seeks to confine the relief in I.A. 20337/2013 to Section 8 of the Arbitration and Conciliation Act alone, while reserving its right to raise objections with regard to maintainability of the suit at the appropriate stage, either at the time of filing the written statement or in the event the Section 8 application is allowed, while appearing before the learned Arbitrator, it is deemed appropriate to modify the order dated 20.01.2015, by directing that the relief in I.A. 20337/2013 filed by the defendant, is confined to Section 8 of the Arbitration and Conciliation Act. If the said application is disallowed for

any reason, then the defendant shall be at liberty to take all the pleas that may be available to it to seek rejection of the plaint under Order VII Rule 11 CPC or take similar objections before the learned Arbitrator.

6. Needless to state that the plaintiff shall also be entitled to ask for a judgment on admissions against the defendant under Order XII Rule 6 CPC on the basis of the admissions, if any, that may be made by it in the written statement and/or documents that may be filed by it.

7. The present application is disposed of.

CS(OS) 1062/2013

1. Vide order dated 27.01.2016, the Joint Registrar had directed that the present suit be transferred to the Court of the learned District Judge, Saket Courts (South). Now that the application filed by the defendant for seeking clarification/recall of the order dated 20.01.2015 has been disposed of, the Registry is directed to transfer the suit file to the District court. The parties shall appear before the competent court on 14.09.2016.

2. It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

HIMA KOHLI, J

AUGUST 26, 2016

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