

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

% **Order delivered on: 3rd June, 2016**

+ **ARB. A. (COMM.) No.8/2016**

NTPC Appellant
Through Mr.Tarkeshwar Nath, Adv. with
Mr.Mukul Gautam and Mr.Param
Kr. Mishra, Adv.

versus

LARSEN & TOUBRO LIMITED Respondent
Through Mr.Rajiv Nayar, Sr. Adv. with
Mr.Kirat Singh Nagra, Mr.Kartik
Yadav & Mr.Kawaljit Singh
Bhatia, Adv.

+ **ARB. A. (COMM.) No.12/2016**

LARSEN & TOUBRO LIMITED Appellant
Through Mr.Rajiv Nayar, Sr. Adv. with
Mr.Kirat Singh Nagra, Mr.Kartik
Yadav & Mr.Kawaljit Singh
Bhatia, Adv.

versus

NTPC LTD. Respondent
Through Mr.Tarkeshwar Nath, Adv. with
Mr.Mukul Gautam and Mr.Param
Kr. Mishra, Adv.

+ **ARB.A. No.13/2014**

NTPC LIMITED Appellant
Through Mr.Tarkeshwar Nath, Adv. with
Mr.Mukul Gautam and Mr.Param
Kr. Mishra, Adv.

versus

M/S LARSEN & TOUBRO LIMITED Respondent
Through Mr.Rajiv Nayar, Sr. Adv. with
Mr.Kirat Singh Nagra, Mr.Kartik
Yadav & Mr.Kawaljit Singh
Bhatia, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The appeal being Arb. A. No.13/2014 has been filed by NTPC against Larsen & Toubro Limited, under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order dated 19th April, 2014 passed by the Arbitral Tribunal. The prayer is made in the petition to set-aside the said order passed with a majority view to the extent it has injuncted the petitioner from seizing/selling the plant, equipments and material and from encashing the Bank Guarantees furnished by the Respondent of Rs.45,59,21,664/- towards performance Bank Guarantees.
2. The NTPC has also filed another appeal being Arb. A. (COMM.) No.8/2016 under Section 37(2) of the Act challenging the order dated 22nd February, 2016 passed by the Arbitral Tribunal, limited to the extent directing the appellant/NTPC to furnish Bank Guarantees in favour of Larsen & Toubro Limited and to negotiate with the bidder in regard to hire charges and to deposit the same in escrow account.
3. The said order dated 22nd February, 2016 has also been challenged by Larsen & Toubro Limited by filing an appeal being Arb.

A. (COMM.) No.12/2016 seeking to set-aside the said order and grant the reliefs as prayed in the interim application dated 3rd February, 2015 under Section 17 of the Act.

4. These matters were discussed from time to time in Court by both the parties and ultimately, the parties submit that all the three appeals may be disposed of on the following terms and conditions, for which an affidavit dated 2nd June, 2016 has also been filed by the NTPC in the Registry:-

- (i) The NTPC shall furnish a Bank Guarantee in terms of the order dated 22nd February, 2016 passed by the Arbitral Tribunal within six weeks and the same shall be kept alive till the pendency of the arbitration proceedings.
- (ii) The NTPC shall pay the hire charges of the TBM and other instruments on a monthly basis to be worked out by the Committee consisting of Experts of both the parties.
- (iii) The said monthly amount of hire charges shall be deposited in an Escrow Account of a Bank to be worked out at the time of passing of the final Award of the Arbitral Tribunal.
- (iv) Mr.J.K.Sharma, Ex-Director (Projects) of NHPC is nominated as Expert from NTPC side to determine hire charges of the said TBM and other machineries. Prof. T. Ramamurthy, IIT, Delhi is nominated as Expert on behalf of Larsen & Toubro Limited for the said purpose. As agreed by both the parties, Committee of nominated Experts to give its report within a period of two weeks from the date of commencement of proceedings. The

outer limit for submitting the report before the Arbitral Tribunal would be 45 days. In case the report is received within a period of two weeks, then the NTPC would be entitled to use the instruments immediately and shall deposit the hire charges. It is understood between the parties that in case there is a substantial difference of opinion about the hire charges of the members of the committee then the aggrieved party will immediately approach to the Court to determine the said aspect. In case the report is not submitted within two weeks but within the outer period of 45 days, under those circumstances, after expiry of two weeks, without prejudice, the petitioner shall deposit a sum of Rs.5 crores in the escrow account, subject to adjustment of the amount after the receipt of the report. (The said direction is being passed by the Court, as the same is not agreeable by NTPC).

- (v) The respondent has agreed to cooperate and hand over the keys and documents of TBM and other machineries to NTPC accordingly in view of the above said conditions as mentioned above without any delay after the expiry of two weeks and on deposit of Rs.5 crores.
- (vi) The parties are given liberty to raise all the issues involved in the above said appeals, before the Arbitral Tribunal.

5. The present appeals and pending application are disposed of accordingly.

6. Copy of order be given *Dasti* to both the parties under signatures of Court Master.

(MANMOHAN SINGH)
JUDGE

JUNE 03, 2016

