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

+ **CS(OS) 1632/2010**

DURHA CONSTRUCTIONS PVT LTD Plaintiff

Through: Ms. Swati Bhushan Sharma,
Advocate.

versus

HINDUSTAN ZINC LIMITED Defendant

Through: Mr. Manish Jha and Mr. Kunal
Mimani, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **14.01.2016**

O.A.No.85/2015 (against order dated 17.1.2015)

1. This O.A is filed against the order of the Joint Registrar dated 17.1.2015 by which the Joint Registrar has dismissed the application under Order 11 Rule 12 CPC filed by the plaintiff.

2. The suit plaint is for recovery of an amount of Rs.67,41,600/-. The disputes between the parties arise from a sub-contract awarded to the present plaintiff by the defendant, and which defendant company was given a work order by M/s Bharat Heavy Electricals Ltd. (in short 'BHEL') for erection and commissioning of the 80 Mega Watt Captive Power Plant at Chanderiya

in the State of Rajasthan. Part of the work was sub-contracted to the plaintiff pertaining to portion of erection and commissioning. The case of the plaintiff in the plaint is that an incentive scheme was drawn up by the defendant as per which if the plaintiff completed its obligation prior in point of time, plaintiff became entitled to monetary incentive. It is the further case of the plaintiff that plaintiff completed the work within the time and thus was entitled to the incentive and hence the present suit for recovery of monies of such incentive amounts.

3. Indubitably, in the present suit the issue would be that whether the plaintiff has completed the work within time schedule so as to be entitled to incentive. In this regard, plaintiff states that the work orders for those sections of the erection and commissioning of the plant which were to be done by the plaintiff, have a co-relation to the work protocols entered into between the defendant and M/s BHEL as to when M/s BHEL handed over possession of certain sections on which the plaintiff was to cause performance under the sub-contract, and thus having bearing on the time

schedule for the plaintiff for completion of the work and accordingly for being paid incentive.

4. I have perused the impugned order dated 17.1.2015. The impugned order dismisses the application by stating that no details of the documents have been given by the plaintiff to the defendant for the defendant to discover such documents. It is also noted that earlier an order was passed by another Joint Registrar on 17.7.2012 dismissing the application under Order 11 Rule 14 CPC as premature because as per the said earlier order dated 17.7.2012 before filing an application under Order 11 Rule 14 CPC an application for discovery should have been filed. Hence the present application was filed for discovery.

5. Though the order dated 17.7.2012 is not in challenge before this Court, in my opinion, even the said order dated 17.7.2012 was not correct because counsel for the plaintiff states that even at that stage and today plaintiff is only seeking the work protocols entered into between the defendant and M/s BHEL having relation to only those protocols which have been entered into by the defendant with the plaintiff and not each and every work protocol for the complete site and portions which have not been

awarded to the plaintiff by the defendant. Clearly, therefore, the issue is only with respect to the work protocols between the defendant and the M/s BHEL, and which pertained to the sites which are awarded to the plaintiff by the defendant under the work orders placed by the defendant upon the plaintiff. This is again re-confirmed by the counsel for the plaintiff during the course of hearing by making reference to the averments made in the application under Order 11 Rule 12 CPC being I.A. 22945/2012 that all work protocols to entire site of BHEL are not sought but only work protocols for contracts awarded and sub-contracted to the plaintiff.

6. Order 11 Rule 12 CPC requires discovery of documents with respect to matters in controversy. In this case matters in controversy i.e the issues definitely pertained to the time period for completion which was available and hence the time period for actual completion. For such purpose the date of commencement of obligations of the plaintiff becomes relevant because the site was to be handed over to the plaintiff for execution of the work order and hence such work protocols become relevant. Consequently and hence the dates of protocols entered into between the defendant and M/s BHEL become relevant because only after the dates of such work protocols

between the defendant and BHEL with respect to the work orders given to the plaintiff, the period for commencement of the execution of the work by the plaintiff for the defendant will commence. Clearly, therefore, documents which are sought to be discovered by the plaintiff are relevant to the matters in controversy and discovery presume lack of knowledge of exact details and dates of the documents which are prayed to be discovered. The Joint Registrar was incorrect in observing for dismissing the application that particulars are not given because surely plaintiff cannot have particulars of work orders between the defendant and BHEL because it is only the defendant which will have with it the details of work orders entered into between it and BHEL so far as those work orders which were subsequently sub-contracted to the plaintiff by the defendant.

7. In view of the above, the present application is allowed. The defendant is directed to discover in accordance with law as provided in the specified form the documents being the work protocols entered into by the defendant with M/s BHEL, pertaining of course limited to such work protocols which have a direct bearing on the work which is sub-contracted by the defendant to the plaintiff i.e the defendant need not discover

documents being the work protocols entered into between it and the BHEL which have no bearing with respect to obligations of the plaintiff to the defendant under the work orders issued by the defendant to the plaintiff.

8. Needful be done by the defendant within a period of eight weeks.

O.A is disposed of accordingly.

CS(OS) No.1632/2010

9. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge (North West), Rohini Courts, Delhi.

10. Let parties appear before the District & Sessions Judge (North West) Rohini Courts, Delhi on 22nd March, 2016. Suit file be made available to the District & Sessions Judge (North West), Rohini Courts, Delhi on the date fixed.