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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB. A. (COMM.) 31/2016; IA Nos. 10614 & 10616/2016**

UNION OF INDIA ..... Appellant
Through: Mr. Jaswinder Singh, Advocate.

versus

DHOOT DEVELOPERS PVT. LTD. (JV) ..... Respondent
Through: Mr. S.K. Maniktala with Mr. Swetab Kumar, Advocates.

CORAM: JUSTICE S.MURALIDHAR

<u>O R D E R</u>
% **07.10.2016**

1. This appeal under Section 37 (2) of the Arbitration and Conciliation Act, 1996 ('Act') is directed against the impugned interim award dated 29th February, 2016 passed by the learned sole Arbitrator in the arbitration proceeding between the Appellant and the Respondent for adjudication of disputes between them arising out of the contract awarded on 2nd February, 2011 by the Appellant to the Respondent, in joint venture with Bengal Silver Project Limited, for the construction of residential accommodation for the Army.

2. Among other the terms and conditions, the contractor was to supply all tools, plant and equipment required for the execution of the contract (Clause 15); the contractor shall not without the prior written approval of the Accepting Officer assign or transfer the contract, or any part thereof or any share, or interest therein (Clause 17). In terms of Clause 30, the tools, plant

and equipment brought to the site shall become the property of the Government and cannot be removed from the site without the prior written approval of the Project Manager. Under Clause 47, the Government shall also be at liberty to hold and retain materials, tackle, machinery and stores of all kinds on site and apply the proceeds of their sale towards the satisfaction of any loss which may arise from the cancellation of the contract. Reliance is also placed on Clause 60 which provides for arbitration in the case the disputes arise between the parties.

3. The subject matter of the present appeal are five pieces of machinery which are purportedly lying on the site and which the Appellant is seeking to attach and sell in view of the alleged breach of conditions of the contract by the Respondent.

4. It is stated that on 13th February, 2013 an order was passed in separate suits being CS (OS) Nos. 394, 395, 396, 397 and 402 of 2012 at the instance of Shri Ram Equipment Finance Co. Limited (SREFCL) against Totem Infrastructure Limited (TIL) seeking the appointment of a Receiver in respect of the same machineries on the ground that SREFCL had financed their purchase by TIL in terms of their *inter se* Agreement and TIL had defaulted in paying the loan instalments. By the said order dated 13th February, 2013, the learned Additional District Judge (ADJ) appointed a Receiver to take possession of the equipments. It was directed that the equipments could not be sold without the permission of the Court.

5. The Appellant sought to intervene in the said suits by filing an application under Order 1 Rule 10 CPC and by objecting to the appointment of the

Receiver. On 18th July, 2013, the learned ADJ dismissed the said application as not maintainable since it was the petition under Section 9 of the Act by an entity which was not a party to the contract between SREFCL and TIL.

6. Aggrieved by the said order, the Appellant filed CM (Main) Nos. 1016, 1020, 1023, 1025 and 1026 of 2013 in this Court. The said petitions were disposed of by this Court by an order dated 12th September, 2014 in which *inter alia* the Court expected that the Appellant herein would have a right to file appropriate proceedings including the proceedings seeking interim orders seeking rights etc. to the disputed machinery in the arbitration proceedings between the Appellant and the Respondent which had already commenced by them.

7. Thereafter, the Appellant filed an application under Section 17 of the Act on 15th October, 2014 before the learned Arbitrator. The above application has been rejected by the learned Arbitrator by the impugned order on the ground that the Appellant herein was unable to show that the five pieces of machinery belongs to and is owed by the contractor. The learned Arbitrator noted that the ownership of the machinery was disputed. Further, neither TIL nor SREFCL was a party to the arbitration proceedings and in their absence, reliefs could not be granted against them.

8. Before this Court, it is urged by learned counsel for the Appellant that the Respondent had acted in breach of terms of the contract by sub-contracting a portion of the work to TIL without any permission from the Project Manager and that in those circumstances any machinery that has been brought on site should be deemed to be belonged to the contractor and therefore, amenable

to the control of the Appellant.

9. In view of the fact that SREFCL went before the Civil Court and an order dated 13th February, 2013 appointing the Receiver was passed, and the Appellant was aware of those orders which have till date not been set aside, it is difficult to accept the plea of the Appellant that irrespective of the orders in those proceedings, the Respondent/Contractor should be deemed to be the person who has ownership of the machineries in question. If indeed, the Respondent has acted in contravention of the contract by sub-contracting some part of the work and permitting machinery not belonging to the contractor to be brought on site, the remedy available to the Appellant would be to claim damages for breach of the contract. It would not be permissible to the Appellant, without showing that the machineries in fact belong to the Respondent, to seek to bring the said machinery to sale by way of auction.

10. In that view of the matter, the Court is unable to find any error having been committed by the learned Arbitrator in passing the impugned interim order. It is clarified that the impugned order of the learned Arbitrator and the consequential order passed in the present appeal are only in the nature of interim orders and will not influence the final view that has to be taken by the learned Arbitrator after evidence is led by the said parties.

11. The appeal and the pending application are dismissed. In the facts and circumstances of the case, there shall be no orders as to costs.

S.MURALIDHAR, J

OCTOBER 07, 2016/*Rm*