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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 293/2016

SHAPOORJI PALLONJI AND COMPANY PRIVATE
LIMITED

..... Petitioner

Through: Dr. Amit George and Mr. Alex Joseph,
Advocates.

versus

OIL AND NATURAL GAS CORPORATION
LIMITED

..... Respondent

Through: Mr. Sunil K. Jain, Mr. T. N. Durga and
Ms. Reeta Chaudhary, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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09.11.2016

IA No. 11088/2016 (for condonation of delay in filing the petition)

1. For the reasons stated in the application, the delay in filing the reply is condoned.

2. The application is disposed of.

O.M.P.(I) (COMM.) 293/2016 & IA No. 11479/2016 (for directions)

3. The Court notices that there have been a series of orders passed in the present petition from time to time by the Court. At the initial hearing on 15th July 2016, the Respondent was directed to maintain status quo with regard to the encashment of three bank guarantees ('BGs') issued by the Petitioner in favour of the Respondent in part fulfilment of the terms and conditions of

the contract.

4. Admittedly the said BGs have been kept alive throughout. In an earlier petition filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 being OMP (I) (COMM.) No. 112 of 2016 a detailed order was passed by this Court on 8th April 2016 after hearing the parties. The operative portion of the said order is contained in paras 2 to 7 of the said order which read as under:

"2. The matter was heard on 7th April, 2016 when certain proposals were exchanged between the parties for settlement in view of the statement made by the learned counsel for the respondent. An undertaking in view of the proposal made has been filed by way of affidavit of Mr. Francis Ambooken, Regional Head and Authorized Signatory of the petitioner-Company, who has deposed in the affidavit on behalf of the petitioner that the petitioner-Company shall execute the remaining/pending work duly identified in the joint inspection report prepared and counter-signed/sealed on 4th April, 2016 by the respondent and the petitioner-Company on or before 30th April, 2016 except the security package mentioned in item No.A5 in page 1 and 2 (Tower A and B) and item No.A4 in page No.3 (Board Room) under the head of 'CCTV & Access Control System'.

3. He has also deposed in the affidavit that the petitioner-Company shall execute the said security package mentioned in item No.A5 in page 1 and 2 (Tower A and B) and item No.A4 in page No.3 (Board Room) under the head of 'CCTV & Access Control System' on or before 15th May, 2016, utilizing the make 'RBH'.

4. It has also been agreed by the petitioner that in case of their failure to duly execute the said remaining/pending work mentioned in the said joint inspection report within

the said time frame specified above, the three Bank Guarantees can be invoked by the respondent. It is also agreed that the petitioner shall start the work from today onwards.

5. The said undertaking is taken on the record. The petitioner Company shall execute the remaining/pending work duly identified in the joint inspection report prepared and counter-signed/sealed on 4th April, 2016 by the respondent and the petitioner-Company on or before 30 April, 2016 except the security package mentioned in item No.A5 in page 1 and 2 (Tower A and B) and item No.A4 in page No.3 (Board Room) under the head of 'CCTV & Access Control System'. The petitioner-Company shall also execute the said security package mentioned in item No.A5 in page 1 and 2 (Tower A and B) and item No.A4 in page No.3 (Board Room) under the head of 'CCTV & Access Control System' on or before 15th May, 2016, utilizing the make 'RBH'.

6. The respondent is agreeable to the aforesaid offer and subject to the petitioner complying with the terms of the undertaking, the respondent will withdraw its termination of the contract and shall not invoke the Bank Guarantees provided by the petitioner. In light of the agreement arrived at, the petitioner is permitted to restart the work from today.

7. The petition is accordingly disposed of.”

5. Learned counsel for the Petitioner states that although a Local Commissioner ('LC') was appointed by the order dated 15th July 2016 for the purposes of handing over of keys and possession of the work site, there has been no independent verification of whether the remaining/pending work as admittedly identified by the joint inspection report prepared and

counter signed on 4th April 2016 have in fact been completed as undertaken by the Petitioner.

6. The Court, therefore, considers it appropriate to appoint Mr. K.N. Agarwal, former Director General, CPWD (Mob. No. 9818310931) as LC to inspect the premises and confirm whether the remaining/pending work admittedly identified by the joint inspection report prepared and counter signed on 4th April 2016 have in fact been completed as undertaken by the Petitioner.

7. At this stage, Mr. Sunil K. Jain, learned counsel appearing for the Respondent points out that there are some other grievances of the Respondent which require to be addressed. He first states that approximately 3200 keys of the rooms and cupboards have not yet been handed over. Secondly, he points out certain remote controls and other magnetic keys have also to be handed over. Learned counsel for the Petitioner, however, disputes this.

8. The Court permits the Respondent to make a list of such grievances and submit it to the LC appointed by the Court who will verify whether any of those grievances remain to be addressed by the Petitioner.

9. Considering that the Arbitral Tribunal (AT) is likely to be constituted within two weeks from today, the Court directs the LC to submit his report to the AT within a period of three weeks from today. The LC will first make a visit to the site within the next 10 days on a date and time that is mutually convenient to the parties by informing both the parties at least three days in

advance. He is permitted to make any number of visits of the premises as may be necessary. Both parties will co-operate with the LC in completing his task. One representative of each party is permitted to remain present at the time of every such visit of the LC. The fees of the LC is fixed at Rs.2 lakhs which will be shared equally by both parties. 50% of the fees shall be paid to the LC within 10 days weeks and the remaining fees after he submits his report. This will be apart from transport and other incidental charges which will be paid as per actuals and shared equally by both parties.

10. The interim order passed by this Court on 15th July 2016 will continue till such time the AT that is constituted modifies, varies or vacates the said order in accordance with law in an application that may be filed by either party under Section 17 of the Arbitration and Conciliation Act, 1996. It is clarified that it will be open to either party to seek any further interim relief before the AT in accordance with law.

11. The petition and the application are disposed of in the above terms.

12. A copy of this order be given *dasti* under the signature of Court Master.

S. MURALIDHAR, J

NOVEMBER 09, 2016

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