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

+ **O.M.P.(I) (COMM.) 318/2016**

SIMPLEX INFRASTRUCTURES LIMITED Petitioner

Through: Mr Sandeep Sethi, Senior Advocate
with Mr Manish Dembla and Ms
Ankita Rai, Advocates.

versus

**PUBLIC WORKS DEPARTMENT GOVT,
OF NCT OF DELHI**

..... Respondent

Through: Mr Anupam Srivastava, ASC for
GNCTD with Ms Shreya Mehta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.08.2016

IA No.9210/2016

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 318/2016

2. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, seeking an injunction restraining the respondent from implementing and/or enforcing or otherwise giving effect to its letter nos.54(115)/SE/FPD F-12/PWD/2016-17 and 54(115)/SE/FPD F-12/PWD Site Office/2016-17/1333 dated 30/04/2016 and 07.07.2016 respectively.

3. Apparently, the disputes between the parties relate to the calculation of price adjustment under Clause 10 CA of the General Conditions of Contract (hereinafter referred to 'GCC'). The petitioner states that the respondent has paid the Running Bills (hereafter RA bills) for the past two years on the basis of the said Clause as it was understood between the parties. The controversy involved in the present petition has arisen on account of the aforementioned letters as the respondent is now seeking to interpret the said Clause (Clause 10CA of GCC) in a different manner. The petitioner apprehends - on the basis of the aforesaid letters - that the respondent would seek to recover amounts, which according to the respondent were excess payments made against the past RA bills, from the future RA bills. In addition, the future RA bills would also be not cleared as per the interpretation of Clause 10CA of GCC, which is espoused by the Petitioner and also understood by the respondent prior to the issue of the impugned letters.

4. The petitioner further contends that if the said recovery is made, the project would suffer as it would starve the petitioner of the necessary cash flows for executing the works. The petitioner has also volunteered to provide a bank guarantee to secure the entire amount involved in the subject controversy, pending resolution of the disputes.

5. The learned counsel appearing for the respondent submitted at the outset that the present petition is premature and the petitioner ought to have exhausted its remedy of approaching the Chief Engineer, PWD for amicable resolution of disputes, before approaching this Court.

6. The learned counsel appearing for the petitioner states that the petitioner would have no reservation in approaching the concerned Chief Engineer for resolution of the disputes provided that the petitioner is protected in the interim stage; that is, the respondent is restrained from recovering any amount on account of past RA Bills and from withholding payments on future RA bills.

7. The learned counsel for the respondent, on instructions of Mr Ravinder Yadav, Superintendent Engineer, states that the petitioner may approach the Chief Engineer, PWD and till then no recovery shall be made from the petitioner on account of the different interpretation of Clause 10CA of GCC and further no amount on that count would be withheld from future RA bills. This statement would continue till the one week after the Chief Engineer has communicated his final opinion on the matter.

8. The respondent is bound down by the said statement. The petitioner may approach the concerned Chief Engineer, PWD within a period of one week from today. In the event, the petitioner does so, the Chief Engineer, PWD shall consider the matter and communicate a reasoned order to the petitioner as expeditiously as possible preferably within three weeks, thereafter. If aggrieved, the petitioner is at liberty to approach this Court. It is further directed that till one week after the communication of the decision no recoveries would be made by the respondent on account of alleged excess payments made against past RA bills and further no amount shall be withheld from future RA bills on account of the disputed interpretation of Clause 10CA of the GCC as indicated in the impugned letters mentioned above.

9. The petition is disposed of with the aforesaid directions.
10. Order *dasti* under the signatures of the court master.

VIBHU BAKHRU, J

AUGUST 02, 2016
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