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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 330/2016

BSC - C&C JOINT VENTURE

..... Petitioner

Through : Mr Navin Kumar, Ms Rashmeet Kaur
and Ms Arpana ZMajumdar, Advocates.

versus

DEDICATED FREIGHT CORRIDOR

CORPORATION OF INDIA LTD

..... Respondent

Through : Mr Saurabh Mishra, Mr Dhan Raj,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.11.2016

1. The present petition was considered on 01.09.2016 and on that date this court passed the following order:-

“The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that the respondent be restrained from deducting the alleged penal interest/damages from the petitioner’s running bills. The controversy involved in the present petition relates to Clause 11.2.6 of the contract in terms of which the respondent is entitled to recover interests @ 2% above the prime lending rate of State Bank of India or 10% p.a., whichever is higher, in case there is a delay in the progress and completion of the work. Admittedly, the project has been delayed. It is the petitioner’s case that the delay is not on account of any reasons pertaining to the petitioner and is largely on account of non performance of obligation on the part of the respondent. It is common ground that the disputes in this regard are pending adjudication before the Arbitral

Tribunal.

In the present case, the petitioner submits that in the event the respondent is permitted to recover the interest in terms of Clause 11.2.6 of the contract, the cash flows of the petitioner would be adversely affected and would jeopardise the execution of the project.

Without going into further merits, it has been suggested that the parties may explore the possibilities of the petitioner furnishing an additional security by way of an unconditional bank guarantee for the amount of interest claimed and on the same being furnished, the respondent may consider not deducting the interest from the running bills submitted by the petitioner.

The learned counsel for the parties seeks time to take instructions in this regard. The respondent shall also take instructions whether the disputes articulated in the present petition can also be referred for adjudication before the Arbitral Tribunal that is considering the other disputes between the parties.

List on 19.09.2016.”

2. The learned counsel appearing for the respondent states on instructions that the respondent would be willing to clear the running bills of the petitioner without deduction of any penalty interest/damages on the petitioner submitting the bank guarantee for a similar amount(s). The learned counsel further submits that the disputes referred to by the petitioner in the petition are in substance related to the disputes which are pending consideration before an Arbitral Tribunal. He further referred to the letters dated 8.7.2016 and 26.07.2016 sent by the petitioner wherein the petitioner had requested that the disputes be also referred to an Arbitral Tribunal.
3. In letter dated 26.07.2016, the petitioner had unequivocally stated that the Engineer has rejected the claim of the petitioner and, accordingly, the

same is required to be referred to a conciliator. However, since the parties have been unable to amicably resolve the disputes, the reference to conciliator would be a futile exercise and, therefore, the disputes be referred to arbitration.

4. The learned counsel for the respondents referred to the above letter and submitted that the respondent is agreeable to the aforesaid course. And, the dispute involved herein be also referred to the same Arbitral Tribunal.

5. In the circumstances, the present petition is disposed of with the following directions:

(i) The petitioner will file its claim regarding the subject matter of the present petition before the Arbitral Tribunal.

(ii) The Arbitral Tribunal shall consider the present petition as an application under Section 17 of the Act and pass an appropriate order thereon.

(iii) The petitioner would be at liberty to approach the Arbitral Tribunal for fixing an early date for consideration of the present application.

6. The Arbitral Tribunal is requested to dispose of this application (considering it as an application U/S 17 of the Act) as expeditiously as possible but preferably within a period of four weeks from today.

VIBHU BAKHRU, J

NOVEMBER 07, 2016

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