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

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Date of Decision: 08.01.2016

+ CS (OS) 1281/2014

M/S FENNER (INDIA) LTD.

..... Plaintiff

Through: Mr. Ravi Gupta, Sr.Adv. with Mr.
Y. N. Bhardwaj, Adv.

versus

M/S BRAHMAPUTRA VALLEY FERTILIZER
CORPORATION LTD.

.....Defendant

Through: Mr. J.B. Ghose and Mr. A. Roy,
Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

IA No.17710/2014 (u/S 8 of the Arbitration and Conciliation Act, 1996)

1. The present application is filed by the defendant under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the disputes as stated in the present plaint to arbitration by appointing an arbitrator/arbitrators.

2. The suit is filed by the plaintiff for recovery of Rs.2,60,19,069/- . The brief facts as stated in the plaint are that the defendant company placed two orders on the plaintiff i.e. (a) Purchase Order and (b) Work Order. The purchase order dated 08.05.2002 was for design and engineering charges, supply of equipment for Namrup-II & III, spares, testing charges, etc. for a net value of Rs.14,81,94,697/-. Certain amendments were made in the purchase order.

3. The work order dated 08.05.2002 was for unloading, handling, storage, assembly and erection at site, commissioning, etc. of the Urea handling system for Namrup-II and Namrup-III. The total contract price was Rs.1,16,52,500/-. The two orders constituted one single turn-key contract for the Urea & Bulk and Bag handling system for Namrup-II and III Revamp Projects. The total value of the contract was Rs. 15,98,47,197/-.

4. It is contended in the plaint that the work stated in the purchase order and work order were duly completed and the Final Acceptance Certificate for both after completion of the performance guarantee test was issued by the defendant under cover of letter dated 23.10.2007. The defendant thereafter also discharged two bank guarantees for performance security vide letter dated 03.05.2008. All payments as per the purchase order have been received by the plaintiff except a sum of Rs.2.41 crores. A part payment of Rs.88.95 lacs was received by the plaintiff on 31.08.2009 leaving a balance of Rs.1,52,00,000/-. It is urged that the present suit is for this balance amount of Rs.1,52,00,000/- and the interest on the belated payment received of Rs. 88,95,098/-.

5. The plaintiff further contends that the defendant has admitted its liability to pay the plaintiff the said sum of Rs.1.52 crores vide its letters dated 01.11.2011 and 09.01.2012. A reference is made to the various correspondences between the parties. Hence, the present suit.

6. The defendant has not filed its written statement. However, in the present application i.e. IA No. 17710/2014, the defendant has pointed out that under the terms of Clause 7.1 of the Special Conditions of Contract it is stipulated that the prices are inclusive of works and contract tax. The

owner is bound to deduct tax at source. The contractor is responsible for getting their accounts settled with the sales tax authorities and is also obliged to submit no dues certificate from the competent sales tax authority before clearance of their final bills. It is urged that the said contractual obligation has been introduced with the object of securing any loss to the Exchequer on account of non-payment by the contractor of its tax liability arising from and in connection with the performance of the contract. It is further urged that the plaintiff has failed to comply with the said Clause and hence, the payments have been withheld. The so called admission letters of the defendant dated 01.11.2011 and 09.01.2012 have been denied. It is stated that the officers who have issued these two letters dated 01.11.2011 and 09.01.2012 had no authority or jurisdiction to issue the same. It is further stated that after obtaining a legal opinion, an enquiry has been initiated to find out how the said letters have been issued and that appropriate action would be taken in accordance with law against the delinquent officers. However, in view of the arbitration clause, it is urged that the matter be referred to arbitration.

7. On 05.05.2015 this court had noted the submission of the learned senior counsel for the plaintiff that apart from dismissing the present application under Section 8 of the Arbitration Act, this court can also pass a decree under Order 12 Rule 6 CPC based on the admissions of the defendant. Learned counsel for the defendant sought time to make submissions on the said contentions.

8. I have heard the learned counsel for the parties and gone through the record.

9. Learned senior counsel appearing for the plaintiff has at the outset submitted that there is no dispute about the existence of an arbitration clause in the agreement. He, however, submits that there is no dispute between the parties. The defendant has given the Final Acceptance Certificate indicating that the work done by the plaintiff for the purchase order and work order has been accepted. The two bank guarantees for performance security furnished by the defendant have been released to the plaintiff. There are unconditional admissions and acknowledgments of the dues of the plaintiff on record including communications dated 01.11.2011 and 09.01.2012. He further submits that the only contention raised by the defendant in the present application is that there is non-compliance of Clause 7.1 of the Special Condition of the contract whereby the plaintiff was obliged to get a no dues certificate from the competent sales tax authority before payment of the final bill. He submits that the necessary NOC from the sales tax department has been placed on record which is a certificate issued by the Assistant Commissioner stating that the plaintiff company is not in Sales Tax Arrears as on date (the document being dated 30.03.2015). The said certificate also states that the accounts are yet to be verified for the years 2010-11 to 2013-14 (VAT) (Deemed Assessment). The seal of the concerned official is placed on this document. In the light of this, he submits that the limited contention of the plaintiff that the defendant had to release the balance amount on receipt of an NOC from the Sales Tax Department has also been made out. It is urged that the present application be dismissed as there is no disputes to be referred to arbitration and a decree as sought may be passed by this court under Order 12 Rule 6 CPC inasmuch as this

court can, on an oral request, exercise powers under Order 12 Rule 6 CPC. For this purpose, reliance is placed on the judgment of the Division Bench of this court in the case of ***Keshav Chander Thakur & Anr. vs. Krishan Chander & Ors., (2014)143DRJ 330*** to contend that the Division Bench has already held that the powers under Order 12 Rule 6 CPC can be exercised on an oral prayer also.

10. Learned senior counsel has also relied upon the judgment of this Court in the case of ***Captain Amar Bhatia vs. The Kingfisher Airlines Ltd., MANU/DE/0907/2014*** to contend that where there is no denial or dispute raised by the defendant, there is nothing to be adjudicated upon in arbitration and the plaintiff cannot be denied relief.

11. Learned counsel appearing for the defendant has relied upon the judgment of the Supreme Court in the case of ***Hindustan Petroleum Corpn. Ltd. vs. Pinkcity Midway Petroleums, AIR 2003 SC 2881 (MANU/SC/0482/2003)*** to contend that where an application under Section 8 of the Arbitration Act is filed, it is obligatory on the court to refer the parties to arbitration in terms of the arbitration agreement and nothing remains to be decided in the original action after such an application is made. It is submitted that it is not for this court to enter into any form of adjudication. Regarding the alleged admissions relied upon by the plaintiff dated 01.11.2011 and 09.01.2012, it is reiterated that these are issued by the concerned officials without authority and that the defendant is in the process of initiating disciplinary proceedings against the concerned officials. He further submits that as far as the so called NOC relied upon by the plaintiff is concerned which is said to be issued by the Assistant Commissioner, the same has been filed along with an

affidavit on 28.05.2015. The defendant had objected to the same as recorded by this Court in the order dated 27.05.2015. It is further urged that the so called document is not a No Objection Certificate as per the terms of the agreement between the parties.

12. I have heard learned counsel for the parties and gone through the record. The basic contention of the plaintiff is that there is no subsisting dispute between the parties in view of the admissions made by the defendant and also in view of the No Objection Certificate from the sales tax authorities now produced by the plaintiff. The defendant however has taken a highly technical stand, namely, that in view of the application filed under Section 8 of the Arbitration Act, this court has no option but to refer the parties to arbitration.

13. We may first look at Section 8 of the Arbitration Act and its interpretation. Section 8 reads as follows:-

“Section 8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.”

14. The Arbitration and Conciliation (Amendment) Ordinance, 2015 makes some changes in the said Section 8. Those amendments however would not have a bearing on the present case.

15. In *Hindustan Petroleum Corpn. Ltd. vs. Pinkcity Midway Petroleums (supra)* the Supreme Court quoted with approval its earlier judgment in the case of *P.Anand Gajapathi Raju & Ors. vs. P.V.G. Raju*

(Dead) & Ors., (2000) 2 SCR 684 as follows:-

“15. This Court in the case of P. Anand Gajapathi Raju and Ors. v. P. V. G. Raju (Dead) and Ors. MANU/SC/0281/2000 : [2000]2SCR684 has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the Civil Court, there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration.”

16. Similarly in ***The Branch Manager, Magma Leasing and Finance Ltd. & Anr. vs. Potluri Madhavalata & Anr., AIR 2010 SC 488*** the Supreme Court held as follows:-

“22. An analysis of Section 8 would show that for its applicability, the following conditions must be satisfied: (a) that there exists an arbitration agreement; (b) that action has been brought to the court by one party to the arbitration agreement against the other party; (c) that the subject matter of the suit is same as the subject matter of the arbitration agreement; (d) that the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and (e) that along with

the application the other party tenders the original arbitration agreement or duly certified copy thereof.

23. Section 8 is in the form of legislative command to the court and once the pre-requisite conditions as aforesaid are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfillment of conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration.”

17. However, in ***Booz Allen and Hamilton Inc. vs. SBI Homes Finance Ltd. & Ors., AIR 2011 SC 2507 (MANU/SC/0533/2011)*** the Supreme Court elaborated the scope of Section 8 of the Act and held as follows:-

“20. The nature and scope of issues arising for consideration in an application under Section 11 of the Act for appointment of arbitrators, are far narrower than those arising in an application under Section 8 of the Act, seeking reference of the parties to a suit to arbitration. While considering an application under Section 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of 'arbitrability' or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the arbitral Tribunal. If the arbitrator wrongly holds that the dispute is arbitrable, the aggrieved party will have to challenge the award by filing an application under Section 34 of the Act, relying upon Sub-Section 2(b)(i) of that section. But where the issue of 'arbitrability' arises in the context of an application under Section 8 of the Act in a pending suit, all aspects of arbitrability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the

civil suit is pending, will refuse an application under Section 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.”

18. A learned Single Judge of this Court in the case of ***GTL Ltd. & Ors. vs. IFCI Ltd. & Anr.***, MANU/DE/3007/2012 while following the interpretation of Section 8 by the Supreme Court in the case of ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.***(supra) held as follows:-

“42. From the reading of foregoing illuminating observations of Supreme Court of India in the case of Booz Allen (supra), it is amply clear that the Court seized of the dispute in a civil suit is within its powers to see and ascertain fully about the arbitrability of the case and all other facets of arbitrability as stated by the Court prior to making such reference of disputes in arbitration and the said enquiry u/s 8 of the Act is wider in scope than that of Section 11 of the Act.”

19. I may now come to the two judgments of the learned Single Judges of this court while interpreting Section 8 of the Arbitration Act. The case of ***Captain Amar Bhatia vs. The Kingfisher Airlines Ltd.*** (supra) pertained to a case where a former employee of the defendant had filed for recovery of the dues. A plea of Section 8 of the Arbitration Act was raised in the leave to defend application claiming that this is sufficient to refer the parties to arbitration. In that background, this court held as follows:-

“12. It cannot be lost sight of that there is really no denial or dispute raised by the defendant to the claim of the plaintiff for recovery of arrears of his salary. There is thus really no

dispute for adjudication by arbitration. I see no reason to deny to the plaintiff in this suit the relief of recovery of money which admittedly is due to the plaintiff and the chances of recovery whereof, even if a decree were to be passed in favour of the plaintiff, are remote and to compel the plaintiff to spend more monies in invoking the arbitration clause when there is really nothing for arbitration. Without thus intending this to be precedent, in the facts and circumstances of the present case, I reject said argument also of the defendant.....”

20. Similarly, in *Maruti Udyog Ltd. vs. Mahalaxmi Motors Ltd. and Anr.*, 95 (2002) DLT 290(MANU/DE/1439/2001), the learned Single Judge of this Court on an application under Section 8 of the Arbitration Act held that where a liability is admitted, there are no disputes or differences with regard to the admitted liability. In the absence of any dispute or differences, the application under Section 8 of the Arbitration Act cannot be allowed. The court held as follows:-

“3. It is settled law that the arbitration clause can be invoked only when there are differences and disputes with regard to certain payments or breach of obligations of the respective parties of the terms of the agreement. However wherever there is an admitted liability, the arbitration clause cannot be invoked. The very connotation "admitted liability" suggests that there are no disputes or differences with regard to the said admitted liability.

4. The extracts of the letter dated 5th April, 1997, the minutes of the meeting and the affidavit filed by Mr.M.C. Mehta in his capacity as Managing Director of the defendant No. 1 company leave no manner of doubt that not only the defendant No. 1 had accepted the liability of 7.63 crores towards the plaintiff but also undertook to discharge the liability by making the payment through Installments.

5. What is material for the purpose of Section 8 of the Arbitration Act is that there should be existence of

difference or disputes with regard to a particular liability arising out of the terms of the agreement. If the liability is acknowledged and admitted it does not come within the meaning and ambit of disputes and differences.

6. In view of the foregoing reasons the application under Section 8(1) of the Arbitration and Conciliation Act, 1996 cannot be allowed as arbitration clause is not invokable in respect of admitted liability.”

21. In the light of the pronouncements of the Hon’ble Supreme Court and of this High Court, it is clear that when no disputes exist between the parties, namely, what is claimed by the plaintiff is admitted by the defendant or impliedly admitted by the defendant, the same cannot be a subject matter of arbitration proceedings. The reasons for this are quite obvious. Courts would normally frown upon frivolous and meaningless litigation between the parties when the facts on the face of it shows that there is no scope for any adjudication left.

22. I may now come to the facts of the present case. The defendant in its application under Section 8 of the Act has spelt out the reasons for denying the payment to the plaintiff as follows:-

“7. The defendant company states that the plaintiff is not entitled to the claim made in the said suit for recovery as the plaintiff had failed and neglected to fulfil its obligations with regard to non-furnishing ‘no dues certificate from the Competent Authority as well as Tax Authority before clearance of their final bill. In this connection, clause 7.1 of the Special Conditions of Contract (Supply cum Erection) is quoted below:

The price shall be inclusive of works and contract tax. Owner will deduct tax at sources as per prevailing rules and issue necessary certificates to this effect to the contractor. The

contractor shall be entirely responsible for getting their accounts settled with sales tax authorities and shall submit no dues certificate from the competent sales tax authority before clearance of their final bill.

8. The defendant company states that the aforesaid contractual obligation on the part of the plaintiff, introduced with the object and purpose of securing against any loss to the exchequer on account of non-payment by the contractor of its tax liability arising from and in connection with the performance of the contract, has admittedly not been complied with by the contractor, i.e. the plaintiff in the present suit.

9. Instead, in a bid to evade/wriggle out of the aforesaid contractual obligation and the consequences of its non-performance, the plaintiff has sought to place reliance on certain provisions of the purported amendment dated 10th September, 2002 to the Purchase Order, which itself did not receive approval to the Board of the Defendant Company, to suggest that the requirement to produce documentary evidence for payment of taxes and duties was completely done away with under the contract. Such a construction is contrary to the express terms of the contract, including in particular, the very provisions of the purported amendment order sought to be relied upon.”

23. Hence, the sum and substance of the dispute that is raised by the defendant is non-compliance by the plaintiff of Clause 7.1 of the Special Condition of the Contract inasmuch as the plaintiff has failed to furnish no dues certificate from the competent sales tax authorities as per the said Clause of the contract. This contention was reiterated by learned counsel for the defendant. The plaintiff has on 28.05.2015 filed an affidavit of its Senior General Manager enclosing No Objection Certificate from the concerned sales tax authorities. The certificate bears the stamp of the

Assistant Commissioner (CT) Madurai Rural (South) and states as follows:-

“CERTIFICATE

Certified that Tvl. J.K.Fenner India (P) Ltd. at No.3, Madurai Mellakkal Road, Kochadai Madurai-16 is a registered dealer in the books of this office under TNVAT Act 2006 bearing TIN No. 33825164260 and he is not in Sales Tax Arrears as on date. The accounts are yet to be verified for the years 2010-11 to 2013-14 (VAT) (Deemed Assessment).

-sd-

Assistant
Commissioner (ST),
Madurai, Rural (India)”

24. The said Sales Tax Certificate is filed by the plaintiff showing that the balance due as Sales Tax is nil. The certificate of the Assistant Commissioner shows that there are no Sales Tax Arrears as on date i.e. 2015. Accounts, however, are yet to be verified for the years 2010-11 to 2013- 14. Defendant in any case is not concerned with the period 2010 to 2014 inasmuch as the contract has been fulfilled much earlier.

25. It may also be noted that this affidavit was filed on 28.05.2015. The defendant had taken an objection to the filing of the affidavit. This objection was noted by this court that the affidavit is taken on record subject to the objections of the defendant which shall be heard on the next date of hearing.

26. No written objections have been filed by the defendant stating the reasons for objecting to the affidavit or certificate. On the next date of hearing i.e. 10.07.2015 when the matter was heard and the judgment was reserved, again no objections were made regarding the contents of the

affidavit. Hence, I take the affidavit and certificate on record.

27. In my opinion, on the face of it the document now produced by the plaintiff filed along with the affidavit dated 28.05.2015 falls within the definition of No Due Certificate issued by the necessary Sales Tax Authorities and fulfils the condition of Clause 7.1 of the Special Condition of the Contract. Defendant has not shown anything to the contrary. In the light of this certificate having been placed on record, no meaningful dispute survives between the parties.

28. Having come to the conclusion that there are no pending disputes between the parties, the question would arise as to what should be the fate of the present application under section 8 of the Arbitration Act. Should the matter be referred to arbitration as sought for by the defendant. Reference may be had to the observations of the Supreme Court in the case of *T.Arivandandam vs. T.V.Satyapal and Anr.*, AIR 1977 SC 2421(MANU/SC/0034/1977) where the Court held as follows:-

“6. The trial Court in this case will remind itself of Section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.”

29. Reference may also be had to the judgment of the Supreme Court in *T.Arivandandam vs. T.V.Satyapal and Anr.*, AIR 1977 SC 2421 the Supreme Court on frivolous litigations should be held as follows:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High

Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful -- not formal -- reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

30. The Division Bench of this court in the case reported as **2012 (127) DRJ 70 Aniruddha Dutta & Ors. vs. Bhawani Shanker Basu & Ors.** held as follows:-

“28. A Court of record has every inherent power to prevent the abuse of its process and Order 7 Rule 11 of the Code of Civil Procedure is not the complete reservoir of the power of nip a frivolous suit when it is still in the stage of infancy. The inherent powers of a Court of record, and we highlight that Section 151 of the Code of Civil Procedure does not confer, but saves the inherent power of a Court also constitutes the reservoir of the power of a Court of record to throw out vexatious suits.”

31. This court in the case of **P.S. Jain Co. Ltd. vs. Atma Ram**

Properties (P) Ltd. & Anr. 205 (2013) DLT 302 while dealing with Order XV CPC held as follows:-

“7. However the precedents are on questions of law and not of facts. It has thus been enquired from the counsel for the appellant/defendant no. 1 as to what is the plea in the written statement of the appellant/defendant no. 1 which is required to be put to trial. Attention of the counsel has been invited to Order XIV and Order XV of the Code of Civil Procedure, 1908. It is not as if the CPC requires all suits to be decided only after trial, unless admissions are made. Order XIV of the CPC requires the Civil Court, after the pleadings have been completed, to frame issues. Such issues are to be framed on material propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Order XV of the CPC prescribes the course of action to be followed where the parties are found not at issue on any question of law or of fact and requires the Court to at once pronounce judgment.

....

21. This aspect is also no longer res integra. As far back in ITC Limited Vs. Debt Recovery Appellate Tribunal MANU/SC/0968/1998: (1998) 2 SCC 70 followed in Sanjay Sharma Vs. Madan Mohan Sharma MANU/DE/1999/2013 as well as in Guru Nanak Vidya Bhandar Trust Vs. UOI MANU/DE/8130/2006 relied upon by the counsel for respondent No. 1, it has been held that merely because issues have been framed does not disentitle the Court from at a subsequent stage, if finds that a relief can be granted on admissions or if finds that no material issue arises or that the evidence on any issue claimed or framed is otherwise barred by law, from passing a decree. There is thus no merit in the appeal which is dismissed with costs. Counsel's fee assessed at Rs. 20,000/-.”

Hence, where no disputes arise, a court can pass a decree under Order XV CPC.

32. Hence, in my opinion on mere technicalities and technical objections, it would be futile to let the present dispute between the parties continue.

33. There are of course certain other contentions between the parties but they may not be relevant to come to a conclusion as to whether an arbitrable dispute exists between the parties. I am, however, merely mentioning the same. It is the stand of the plaintiff that the defendant had acknowledged the dues payable to the plaintiff on 01.11.2011 and 09.01.2012. The said two documents dated 01.11.2011 and 09.01.2012 categorically state that the defendant is going to release the balance amount of Rs.1.52 crores payable to the plaintiff.

34. The defendant has, however, strongly refuted the said acknowledgements stating that the officers who have signed the said communications had no authority to make any such communications. It is further stated that an enquiry has been initiated as to how these officers have signed these documents and that if necessary, appropriate disciplinary proceedings shall be commenced against the guilty officials.

35. In my opinion, the above dispute regarding acknowledgements issued by the defendant, in the light of the documents placed on record by the plaintiff, has lost its significance. Irrespective of these disputes, the conclusion which I have drawn above is that there are no pending disputes between the parties. There is, in my opinion, no need for adjudication of this dispute in question as it would be an exercise in futility.

36. In the light of the above facts, in my opinion the defendant which is a public sector undertaking under the control of Union of India cannot

be permitted to continue to prolong the agony of the plaintiff on highly technical grounds. The purchase order and work order are of 08.05.2002. Final acceptance certificate has been issued on 23.10.2007. 8 years have thereafter gone by and final instalment payable to the plaintiff is being withheld on meaningless technical issues. There are now no pending disputes between the parties. No dispute exists to refer the parties to Arbitration.

37. In the light of the above, I dismiss the present application of the defendant.

CS (OS) 1281/2014

38. I have already held above, there are no arbitrable disputes between the parties in the light of the facts on record. In exercise of powers under Order 12 Rule 6 CPC, in view of the averments/admissions in IA No.17710/2014 made by the defendant, I pass a decree in favour of the plaintiff and against the defendant for a sum of Rs.2,60,19,069. A sum of Rs. 24,78,442/- is claimed as interest on the amount of Rs.88,95,098/- which as per the plaintiff has been paid after a delay. I disallow this claim as no submission has been made in this regard.

39. I pass a decree for the sum of Rs.2,60,19,069/- in favour of the plaintiff and against the defendant. The plaintiff shall also be entitled to simple interest @ 12% per annum from the date of the filing of the suit till recovery. The plaintiff shall also be entitled to costs.

**(JAYANT NATH)
JUDGE**

JANUARY 08, 2016/rb