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

+ O.M.P. 1282/2014

C.E CONSTRUCTION LTD & ANR Petitioners
Through Mr.Mohit Chaudhary, Adv. with
Mr.Gaurav Kumar and Ms.Damini
Chawla, Advs.

versus

INTERTOLL ICS INDIA (P) LTD & ORS Respondents
Through Mr.Balaji Subramaniam, Adv. with
Ms.Jasleen K. Oberoi and
Ms.Surbhi Mehta, Advs.
Mr.Ramesh Kumar, Adv. with
Mr.Sandeep Chatterjee, Adv. for
R-9.
Mr.K.S. Parihar, Adv. for R-10/RBI.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% 29.01.2016

The petitioners filed the petition under Section 9 of the Arbitration and Conciliation Act, 1996 in October 2014.

Learned counsel appearing on behalf of the respondent No.8, the main contesting party, has strongly opposed for continuation of the further proceedings of the present petition who has stated that the petitioners have failed to take any step to initiate arbitration proceedings on the basis of the alleged agreement executed between the parties and who have also failed to serve other respondents. They are just dragging the proceedings in order to harass the respondent No.8.

Learned counsel for the respondent No.8 has not disputed the

fact that earlier the petitioners filed a petition under Section 11 of the Act which was withdrawn by the petitioners. The main contention of the respondent No.8 is that three separate agreements relied upon by the petitioners do not contain valid existing arbitration agreement which could cover the dispute raised in the petition. The contesting respondent No.8 has referred paras 8 to 11 of the reply filed on 5th November, 2014. Counsel submits that the said arbitration clause would only cover in its ambit the dispute between the parties to the same and would not apply to the dispute with the third parties such as respondent No.8. Any dispute that the petitioners may have with the respondent No.8 would not fall within the ambit of arbitration agreement set out in the Joint Venture Agreement and the same could not be relied upon or invoked by the petitioners against the respondent No.8. The agreement referred by the petitioners are with regard to other respondents and why the proceedings between the petitioner and respondent No.8 should continue. No satisfactory answer has come forward from the petitioners side. Still without expressing any opinion on merit, in case the petitioners have any plea to refer the dispute before the Arbitrator and the petitioners feel that there is a valid arbitration clause in three agreements relied upon against respondent No.8, the petitioners are at liberty to invoke arbitration clause in accordance with law. The contention of the respondent No.8 would be considered on merit as to whether arbitration proceedings between the parties can be initiated or not. As far as present petition is concerned, the same is pending for the last more than last 15 months. However, no steps are taken by the petitioners to invoke the arbitration clause by filing the petition under Section 11 of the Act. Therefore, I am of the view that the present

petition cannot continue. However, if the contention of the petitioners is accepted in the petition under Section 11 of the Act and Arbitral Tribunal is constituted, the petitioners would be entitled to move the application for interim order under Section 17 of the Act. The question of keeping the present petition pending for such a long time at the pretext of serving of other respondents which are not being served for the last 15 months does not arise. Therefore, the present petition is disposed of accordingly.

JANUARY 29, 2016/jk

MANMOHAN SINGH, J.