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

+ O.M.P.(I) (COMM.) 463/2016

K.R. ANAND

..... Petitioner

Through: Mr R. K. Modi, Advocate.

versus

NAVAYUGA ENGINEERING CO LTD

& ANR.

..... Respondents

Through: Mr Arijit Mazumdar, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.12.2016**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“(A) This Hon'ble Court may be pleased to issue an ex parte ad interim injunction against respondent No.1 thereby restraining respondent no.1 from in any manner settling or relinquishing any part of the claim in terms of the award which has become enforceable as a decree without the express written consent of the petitioner. Respondent No.1 be further restrained from appropriating the entire amount recoverable from respondent no.2 on the basis of the award dated 26/12/2011 which is now become enforceable as a decree, the Hon'ble Court may be further pleased to restrain respondent No.2 from making payment of Rs.9,87,19,414.35 along with payable interest to respondent No.1 as the same is payable to the petitioner to respondent No.1 with interest, in any manner and the respondent No.2 be directed not to pay the entire amount as per the award to respondent no.1 and to pay the awarded amount to the extent of Rs. 9,87,19,414.35 with interest to the petitioner and balance to respondent no.1 or to hold the amount of Rs.

9,87,19,414.35 along with payable interest on behalf of the petitioner.”

2. The petitioner states that respondent no. 2 (hereafter ‘GNCTD’) had awarded a contract for construction of a bridge across river Yamuna near Geeta Colony, Delhi to respondent no.1 (hereafter ‘NECL’). The said works were to be completed by 29.01.2008. It has been averred that since NECL was not in a position to complete the work on its own, it had delegated a part of the works to the petitioner.

3. The petitioner states that out of the total work of the value of ₹82,46,36,748/- executed in terms of the aforesaid contract between GNCTD and NECL, the petitioner had executed works of the value of ₹35,32,59,294/-. The petitioner further asserts that NECL raised claims relating to the works (which in fact was executed by the petitioner) against GNCTD. The said disputes were referred to arbitration between NECL and GNCTD and culminated in an award dated 26.12.2011. GNCTD filed a petition under Section 34 of the Act impugning the said award (being OMP No.420/2012) and by an order dated 31.03.2014 passed by a single judge of this Court, the said award was set aside in respect of certain claims. NECL preferred an appeal against the said order dated 31.03.2014 passed in OMP No.420/2012 before a Division Bench of this Court. The petitioner states that by a judgment dated 15.03.2016, the Division Bench set aside the order dated 31.03.2014 thereby reinstating the award in favour of NECL.

4. The petitioner has further averred that it had arrived at an understanding with NECL, whereby NECL had agreed to pursue the claims in respect of works executed by the petitioner with GNCTD and the arbitral

award referred to above also includes amounts awarded in relation to those works.

5. The petitioner apprehends that NECL would enter into a settlement and relinquish a part of the claims that are awarded in favour of NECL (relating to the works executed by the petitioner) and thereby frustrate the claims of the petitioner.

6. The learned counsel appearing for NECL submits that the award rendered is not in respect of all the works executed by the petitioner. He further submits that the Division Bench of this Court had not reinstated the award as contended and this had led NECL to approach the Supreme Court by filing a Special Leave Petition against the judgment dated 15.03.2016 passed by the Division Bench.

7. The learned counsel appearing for NECL further contended that the NECL does not admit that any amount is due to the petitioner. He also stated that the works were completed in 2008 and any claim that may be made by the petitioner would be barred by limitation.

8. However, the learned counsel for NECL stated that notwithstanding that NECL disputes the claims made by the petitioner, it did not dispute the existence of the sub-contract or the arbitration clause contained therein.

9. After some arguments, the learned counsel requested that an Arbitrator be appointed to adjudicate the disputes that have arisen between them.

10. Accordingly, with the consent of the petitioner and NECL, Justice V. K. Shali (Retired), former Judge of this Court is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

11. The parties (the petitioner and NECL) agree that the arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and in accordance with its rules. It is so directed.

12. Insofar as GNCTD is concerned, it is admitted that there is no agreement between the petitioner and GNCTD and the entire case of the petitioner rests on the said premise. Accordingly, GNCTD cannot be referred to arbitration.

13. Insofar as the petitioner's prayer for interim relief is concerned, that is restraining the respondents from relinquishing or settling the part of the awarded sum, the learned counsel for NECL states that he has no instructions whether NECL and GNCTD are endeavouring to settle any of their claims as apprehended by the petitioner. In view of the above, it is directed that NECL shall not enter into any settlement with GNCTD, in respect of the awarded sums which relate to any of the works executed by the petitioner, for a period of four weeks from today. In the meantime, the petitioner is at liberty to approach the Arbitrator for any relief that may be advised.

14. It is clarified that nothing stated in this order shall be construed as an expression of opinion as to the merits of the dispute between the parties.

The Arbitrator shall also consider the petitioner's claim and prayer for any interim order, uninfluenced by any observation or directions made in this order.

15. The petition is disposed of.

16. Order dasti.

VIBHU BAKHRU, J

DECEMBER 21, 2016
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