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

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**O.M.P.(I) (COMM.) 474/2016**

ITD CEMENTATION INDIA LTD.

..... Petitioner

Through: Mr.Sandeep Sethi, Senior Advocate with  
Mr. Manish Dembla, Ms. Tanv Priya Gupta,  
Advocates.

versus

PUBLIC WORKS DEPARTMENT GOVT. OF  
NCT OF DELHI

..... Respondent

Through: Mr. Peeyoosh Kalra, ASC for GNCTD.

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

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**14.12.2016**

**IA No. 15431 of 2016(exemption)**

1. Allowed, subject to all just exceptions.

**O.M.P.(I) (COMM.) 474 of 2016**

2. The preliminary objection is taken to the maintainability of this petition by referring to Clause 2 of the contract entered into between the parties which states that the amount calculated for breach of contract would be decided by the authorities specified in Schedule F whose decision shall be final and binding”. It is submitted that in the present case the question as to how much liquidated damages (‘LDs’) should be recovered from the Petitioner as determined by the letter dated 17<sup>th</sup> November, 2016 is outside the purview of the Arbitrator. It is seen that by letter dated 17<sup>th</sup> November,

2016, the Chief Project Manager determined that the Petitioner is solely responsible for delay of 78 days after 18<sup>th</sup> May, 2016. The LD has been calculated only on that basis.

3. It is evident from the reading of the clauses that the decision as regards the Petitioner being responsible for 78 days' delay is not outside the purview of arbitration. The amount of LD sought to be recovered is consequential to the said determination and cannot be separated. In other words, if the decision regarding the number of days' delay attributable to the Petitioner is found in the arbitration to be erroneous for any reason whatsoever, then clearly the consequential action of recovery of LD would also become unsustainable in law.

4. In that view of the matter, the preliminary objection to the maintainability of the present petition is negated.

5. Mr. Sandeep Sethi, learned Senior counsel appearing for the Petitioner points out that against the aforementioned determination dated 17<sup>th</sup> November, 2016, the Petitioner has in terms of Clause 25 (i) of the General Conditions of the Contract ('GCC') preferred an appeal before the Chief Engineer ('CE') on 23<sup>rd</sup> November, 2016. Even before the decision in the said appeal, the Superintendent Engineer ('SE') has sought to recover the amount already determined by him by encashing the bank guarantee ('BG') which has been kept renewed by the Petitioner. It is pointed out that even after the appeal is decided by the SE, the Petitioner has one more remedy before the Dispute Redressal Committee ('DRC'). Reference is also made to an order dated 2<sup>nd</sup> August, 2016 passed by this Court in OMP (I) (Comm)

No. 318 of 2016 where, under similar circumstances, the Court has restrained the Respondent from taking coercive action till such time the appeal before the CE is not decided.

6. The Court is of the view that with the appeal filed by the Petitioner against the decision of the SE remaining pending before the CE in terms of Clause 25 (i) of the GCC as modified, the precipitate action of the Respondent at this stage is not justified. In the circumstances, it is directed that the CE will, after hearing the Petitioner, pass a reasoned order within a period of four weeks thereafter and communicate the said decision to the Petitioner not later than ten days thereafter.

7. If the decision is against the Petitioner, then the Petitioner shall be at liberty to refer the dispute to the DRC. In that event, till a period of one week after communication of the decision of the DRC, if it is adverse to the Petitioner, the Respondent will not take any coercive steps including recovery of any LD amount by encashing BG so as to enable the Petitioner to take appropriate steps.

8. The petition is disposed of in the above terms. *Dasti.*

**S.MURALIDHAR, J**

**DECEMBER 14, 2016**

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