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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 38/2015

NCC LTD. (FORMERLY NAGARJUNA CONSTRUCTIONS LTD.)

..... Petitioner

Through: Mr. Ramji Srinivasan, Senior Advocate
with Ms. Priya Kumar, Mr. Adhish Srivastava, Mr.
Vivek Paul and Mr. Tushar Bhardwaj, Advocates.

versus

SOMDATT BUILDERS PVT. LTD.

..... Respondent

Through: Mr. Chetan Sharma, Senior Advocate
with Mr. Arvind Minocha, Advocate.

AND

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**O.M.P.(I) (COMM.) 345/2016 & IA No. 11530/2016 (for recall of
order dated 2nd September 2016) & IA No. 11531/2016 (for stay)**

NCC LTD. (FORMERLY NAGARJUNA CONSTRUCTIONS LTD.)

..... Petitioner

Through: Mr. Ramji Srinivasan, Senior Advocate
with Ms. Priya Kumar, Mr. Adhish Srivastava, Mr.
Vivek Paul and Mr. Tushar Bhardwaj, Advocates.

versus

SOMDATT BUILDERS PVT. LTD.

..... Respondent

Through: Mr. Chetan Sharma, Senior Advocate
with Mr. Arvind Minocha, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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06.10.2016

1. These two petitions under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') has been filed by NCC Ltd. (formerly known as Nagarjuna Constructions Ltd.). The Respondent in both petitions is Somdatt Builders Pvt. Ltd.

2. The background to the both these petitions is that the Petitioner along with the Respondent and Navyug Engineering Company Limited ('NEC') formed a joint venture ('JV') called 'Somdatt-NCC-NEC JV'. A JV agreement dated 8th March, 2001 was entered into by the parties for the purposes of submitting of bids for the construction and completion of four laning of and strengthening of NH-2 Section from Km 470.000 to Km 38.000 (Contract No. GTRP/4), Km 317.000 to Km 65 (Contract No. GTRP/5) and Km 240.100 to Km 320.000 (Contract No. GTRP/7) - Construction Packages II- B, IV-A and V-B. The JV was admittedly awarded construction package II-B in U.P. It is asserted by the Petitioner and not disputed by the Respondent that till date the JV continues and the Petitioner continues to be a JV partner.

3. It appears that at one stage the disputes arising amongst the parties as regards the Petitioner's share of profit, which was to be 2% of the gross value of the contract work, was sought to be referred to arbitration by a three-member Arbitral Tribunal ('AT'). Admittedly, the arbitration proceedings did not continue. As far as the present petitions are concerned, there are two sets of reliefs being claimed by the Petitioner.

4. In O.M.P.(I) (Comm.) 38/2015, the prayer is that the Respondent should be directed to disclose the bank accounts maintained and operated by the JV

and furnish the statement of all the bank accounts of the JV. Mr. Ramji Srinivasan, learned Senior counsel for the Petitioner, submits that the purpose of the above prayer is to only examine what was earned by the JV and whether the Petitioner has been paid its due share of the profits of the JV in terms of the JV agreement. In O.M.P.(I) (Comm.) 38/2015, a direction was issued by the Court on 4th February, 2016 requiring the Respondent to file the details of the bank accounts maintained by it “in a sealed cover in the Registry”. That order has been complied with and accounts have been filed in a sealed cover.

5. Meanwhile, O.M.P.(I) (Comm.) 345/2016 has been filed by the Petitioner where the relief claimed is for a direction to the Respondent to secure a sum of Rs.14.30 crores by depositing it in the Court or furnishing a bank guarantee to the extent of the above sum. Mr. Ramji Srinivasan clarifies that this is the approximate sum claimed by the Petitioner and that it may have other claims as well.

6. The above prayer to allow the Petitioner to examine the accounts which have been filed in the sealed cover is vehemently resisted by the Respondent. The Respondent's apprehension, articulated by Mr Chetan Sharma, Senior counsel, is that the Petitioner should not get a foothold for making claims which according to the Respondent are time barred. He urges that if indeed such claims are legally unsustainable then no relief in a petition under Section 9 of the Act should be permitted. The further apprehension is that after securing interim reliefs in these applications, the Petitioner will not be interested in proceeding with the arbitration which it is

bound to in terms of Section 9 of the Act as amended in 2015. According to the Respondent, the Petitioner has lost its right to maintain any claim or seek adjudication of such claims in arbitration.

7. The above submissions have been considered. The fact of the matter is that the Petitioner continues to be a member of the JV. What has been filed in the sealed cover are the accounts of the JV. Under Section 9 (1) (e) of the Act, the Court is empowered to pass “such other interim measure of protection as may appear to the court to be just and convenient.”

8. The Court does not see any reason why a continuing member of the JV should not be given access to the accounts of the JV. It is clarified that the mere fact that the Petitioner is allowed to inspect the accounts that have been filed in a sealed cover, or obtain a copy thereof, will not be construed as an admission by the Respondent of the tenability of the claims of the Petitioner. It will also not be understood to mean that the Court has expressed any view on the maintainability or merits of any such claim. It is further clarified that by giving access to the accounts filed in the sealed cover, the Court is not deciding the question of limitation. All such defences that the Respondent may have qua the said claims of the Petitioner will be decided in the arbitration proceedings.

9. The order passed by this Court is conditional upon the Petitioner invoking the arbitration clause and taking steps to constitute the Arbitral Tribunal (AT) so that the arbitral proceedings commence within a period of 90 days from today. Therefore, in the first instance, the Petitioner will file an affidavit of undertaking in this Court within one week from today that it will

in terms of Section 9 (2) of the Act take steps to have the arbitration proceedings commence within a period of 90 days from today. It is only upon filing of such affidavit that the Petitioner will be permitted in the presence of learned counsel for the Respondent to inspect the accounts filed in the sealed cover in the presence of the Registrar (Original Side) and obtain a copy thereof. After that exercise is complete, the accounts filed in the sealed cover will be returned to the Respondent but kept in safe custody and shall be produced by the Respondent in the arbitral proceedings as and when directed by the AT.

10. It will be open to both parties to seek any further interim reliefs before the AT in accordance with law.

11. The petitions and the pending applications are disposed of.

12. Order *dasti*.

S. MURALIDHAR, J

OCTOBER 06, 2016

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