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

+ O.M.P. (T) (COMM.) 21/2015

STEEL AUTHORITY OF INDIA

..... Petitioner

Through Mr.Ciccu Mukhopadhyay, Sr. Adv.
with Mr.Abhijit Sinha, Mr.Saurav
Agarwal, Ms.Rashmi Gogoi,
Ms.Sreoshi Chatterjee & Mr.Ashish
Tiwari, Advs.

versus

NOBLE CHARTERING INC.

..... Respondent

Through Mr.Sandeep Gupta, Adv. with
Mr.Tushar Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

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05.09.2016

I.A. No.10909/2016 (for clarification of the order dated 13th July, 2016, by petitioner)

The abovementioned application has been filed by the petitioner, seeking the following reliefs:-

“a. pass an order clarifying that the mandate of the First Tribunal stands terminated with effect from the date of Agreement;

b. pass an order modifying and/or varying the order dated 13th July, 2016 to the extent necessary in the facts and circumstances aforesaid.”

It is stated in the application that on 29th June, 2016, an agreement was entered into between the petitioner and the respondent, pursuant to which the parties agreed to appoint Justice S.S.Nijjar as sole Arbitrator (“New Tribunal”) in place of First Tribunal of Capt. S.M. Berry, Chairman, constituted under the Maritime Arbitration Rules of the Indian Council of Arbitration (ICA). The parties also agreed to terminate the mandate of the First Tribunal. On 9th July, 2016 the New Tribunal held the first sitting and thereby entered upon reference in view of the Agreement.

When the matter was listed before Court on 13th July, 2016, the following order was passed by this Court:-

“The subject matter of the disputes has been resolved. In view of the same, a new Tribunal of sole arbitrator has been constituted. The present petition has become infructuous. The same is disposed of accordingly.”

It is further stated in the application that in view of the above said order, on 23rd July, 2016, the respondent (claimant therein) addressed a letter to the ICA seeking return of the records in view of the agreement between the parties. Copy of the said letter is placed on record. However, the ICA sent an email on 29th July, 2016 that each of the parties should deposit a further amount of Rs.4,35,225/- each towards the arbitration costs and expenses on the amended claim in ACM-177 and Rs.4,55,950/- each towards the arbitration costs and expenses on the amended claim and counter-claim in ACM-178 positively by 8th August, 2016. Even, on 23rd August, 2016, the Presiding Member of the First Tribunal passed the following order:-

“The tribunal has noted the contents of the communication under reference above.

The Claimants and the Respondents are once again requested to pay the balance of the fees due to the Indian Council of Arbitration.

The matter of the return of the original papers and proceedings will be taken up after the Indian Council of Arbitration confirms receipt of the aforesaid balance fees.”

It is stated that till date, since the First Tribunal is proceeding on the premise that it still has the jurisdiction in the matter, the records are not being released by ICA. It is further stated that the ICA has been paid over one crores rupees by both the parties and only few preliminary hearings have been held.

Learned counsel for the applicant states that the arbitral records are urgently required, *inter-alia*, for cross-examination of the fact witness which is scheduled to be conducted from 12th to 15th September, 2016. In any event, after passing of the order dated 13th July, 2016, the ICA could not proceed on the basis that the First Tribunal continues to exist, particularly when this Court has itself recognized the constitution of the New Tribunal by order dated 13th July, 2016. The prayer is made for modification of the said order to that extent.

In view of the averments made in the application, the prayer made therein is allowed. The mandate of the First Arbitral Tribunal constituted earlier is terminated with effect from the date of the Agreement, as the learned counsel for the respondent has no objection for the same. As far as the fee part is concerned, parties may approach the earlier Arbitral Tribunal, i.e. ICA and resolve the said issue. So far as the arbitral record is concerned, the same be handed over by the ICA to the respondent/claimant as agreed,

without insisting for the remaining fee at this stage, in a sealed cover who would produce the same before the New Tribunal.

The application is accordingly disposed of.

Dasti, under the signatures of the Court Master.

MANMOHAN SINGH, J.

SEPTEMBER 05, 2016/ka