IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION IN COMMERCIAL DIVISION NO. 549 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO. 421 OF 2017
WITH
NOTICE OF MOTION IN COMMERCIAL DIVISION NO. 553 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO. 420 OF 2017

Valentine Maritime Ltd. & Anr. .. Applicant/Org.Respd.No.1

In the matter of :

Kreuz Subesea Technologies Pte Ltd. .. Petitioner
Vs.
Valentine Maritime Ltd. & Anr. .. Respondents

Mr.V.K. Ramabhadran, senior advocate a/w. Mr.Kunal Mehta, Mr.Prashant Asher and Mr.Brendon Pereira i/b Crawford Bayley and Co. for petitioner.

Dr.Birendra Saraf a/w. Mr.Ranjeev Carvalho, Mr.Amey Nabiar and Ms. Swati Jain i/b M/s. A.S. Dayal and Associates for respondent no.1 and for applicant in NMCD/549/2017 and in NMCD/553/2017

Mr.S.A. Bhalwal a/w. Ms. Usha Singh i/b Vyas and Bhalwal for respondent no.2.

CORAM : K.R.SHRIRAM, J.
DATE : 9TH NOVEMBER 2017

P.C.

1 Though Notice of Motion No. 553 of 2017 in Commercial Arbitration

petition No. 420 of 2017 is not listed, the same is taken up for hearing.

2 By consent of the parties through their counsel, the following order is passed :

(a) Mr.Justice B.N. Naik, Former Judge of this Court, is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counterclaim, if any, arising out of the Subcontract Agreements dated 16.11.2014 and 22.04.2015 linked to contract Ref. No.MW/OW/MN/MHNRD PH III PLP/06/2013 (Main Contract) as mentioned in paragraph 3 and paragraph 4 of the petitions and in notice of motion no. 549 of 2017 in commercial petition No. 421 of 2017 and notice of motion no. 553 of 2017 in commercial petition No. 420 of 2017.

(b) The fees and administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by petitioner and 50% by respondents and the same will be costs in the arbitration proceedings.

(c) The Arbitrator, within four weeks of receiving the communication from petitioner and/or respondents forwarding a copy of this order, shall make disclosure in writing to the parties directly as required under Section

11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 (The said Act).

(d) Commercial arbitration petition No. 421 of 2017 read with notice of motion no. 549 of 2017 and commercial petition No. 420 of 2017 read with notice of motion no.553 of 2017 be considered as applications under Section 17 of the said Act by the Sole Arbitrator for further orders. The Arbitrator may consider the affidavits in support of the notice of motion No. 549 of 2017 and notice of motion No.553 of 2017 as reply to Section 17 application. Parties are at liberty to file further affidavits before the Arbitrator. All rights and contentions are kept open.

(e) Ad-interim order passed on 25th July 2017 shall continue to remain in force until the application under Section 17 is disposed.

(f) The Arbitrator to dispose the application under Section 17 on or before before 31st January 2018.

(g) The statement of respondent no.1 that they will not take back the bank guarantee from respondent no.1 for a period of one week after the validity of bank guarantee is over, is accepted.

(i) Petitioner will not apply for enforcement of the ad-interim order passed on 25th July 2017, until 31st January 2018.

(j) ONGC not to invoke or encash the bank guarantee to the benefit of petitioner as stated in the order dated 25th July 2017 [prayer clause (f)], until disposal of the application under Section 17 of the said Act as mentioned above.

(k) Since the order dated 25th July 2017 is only an ad-interim order, it will be open for the Learned Arbitrator to consider whether that order should be continued or modified or vacated and pass such order as he may think fit, being uninfluenced by the observations made in the order dated 25th July 2017.

All rights and contentions of parties are kept open.

3 It is clarified that this order will not come in the way of respondent no.2 taking action under the Main Contract entered into with respondent no.1, including invoking/encashing the bank guarantee. If respondent no.2 decides to invoke/encash the bank guarantee then respondent no.2 shall forward a copy of their letter of invocation to petitioner, as well.

4 Petitions accordingly disposed.

5 In view of above, notices of motion also stand disposed.

Liberty to apply.

(K.R. SHRIRAM, J.)