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

+ O.M.P.(I) (COMM.) 57/2017

NCC LTD

..... Petitioner

Through: Ms Priya Kumar with Ms Adhish
Srivastava and Ms Tanya Tiwari,
Advocates.

versus

SOMDATT BUILDERS PVT. LTD. & ORS. Respondents

Through: Mr Arvind Minocha, Advocate for R-
1.
Ms Gunjan Sinha Jain and Mr
Mukesh Kumar, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **06.02.2017**

IA No.1520/2017

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 57/2017

1. The petitioner (hereafter 'NCC') has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an order be passed restraining respondent no.1 (hereafter 'Somdatt') from operating the bank accounts maintained with respondent no.2 (PNB) or any other bank in the name of "SOMDATT- NCC - NEC JV" and further restraining the respondent no.3 (NHAI) from releasing any sums to the Joint Venture (allegedly constituted by Somdatt and NCC).

2. Ms Priya Kumar, the learned counsel appearing for NCC pointed out at the outset that NCC had filed other applications under Section 9 of the Act which were disposed of but the orders passed therein have not been complied with.

3. The attention of this court is drawn to an order dated 06.10.2016 passed in OMP (I) (Comm.) 38/2015 and OMP (I) No.345/2016 whereby the coordinate Bench of this Court had passed certain interim orders in favour of NCC. The Court had further clarified that those orders would be conditional on NCC invoking the arbitration clause and taking steps to constitute the Arbitral Tribunal so that the arbitral proceedings are commenced within a period of 90 days from that date.

4. Admittedly, NCC did not take any steps for constitution of the Arbitral Tribunal till almost two and a half months thereafter. This is clear as the letter invoking the arbitration was issued only on 19.12.2016. By the said letter NCC had sought concurrence of the Somdatt for appointment of the Sole Arbitrator. This was, admittedly, in variance with the arbitration clause which contemplates reference of disputes to an arbitral tribunal of three members. In response to the aforesaid letter, Somdatt had raised objections disputing the invocation by alleging the same to be not in conformity with the arbitration clause. Thereafter, NCC invoked the arbitration and appointed its nominee arbitrator by its letter dated 03.02.2017. The learned counsel for Somdatt states that Somdatt would appoint its nominee arbitrator within a period of one week from today positively.

5. Ms Kumar states that the arbitration clause could not be invoked

expeditiously as NCC did not have access to the statements of accounts, which were directed to be disclosed by this court. The said contention is unpersuasive as NCC was not required to make its claim in the letter of invocation but only needed to indicate the disputes. All that NCC was required to do was to invoke the arbitration clause in terms of the arbitration clause; which undisputedly, it failed to do with any urgency.

6. The learned counsel for NHAI states that at the present stage there is no immediate plan for releasing of any funds to Somdatt since talks for settlement are still inconclusive.

7. The principal apprehension of NCC is that if any funds are released by NHAI the same shall be mis-utilised or misappropriated by Somdatt to the exclusion of NCC. In view of the lack of urgency shown by NCC in taking steps for constitution of the Arbitral Tribunal and in view of the statement made by the learned counsel for NHAI, this court is not inclined to pass any orders other than directing NHAI to give at least two days prior intimation to NCC in the event NHAI decides to release any funds to Somdatt.

8. NCC is at liberty to approach the Arbitral Tribunal as and when constituted for seeking further relief.

9. Order dasti.

VIBHU BAKHRU, J

FEBRUARY 06, 2017
MK