

\$~23

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

+ O.M.P.(I) (COMM.) 229/2016 and I.A. 9669/2016

JMC PROJECTS (INDIA) LTD.

..... Petitioner

Through: Mr Dayan Krishnan, Senior Advocate
with Mr Arshdeep Singh, Mr
Tanmaya Mehta, Mr Manish Jha and
Mr Manu Sahni, Advocates.

versus

INDURE (P) LIMITED & ORS.

..... Respondents

Through: Mr Amit Sibal, Senior Advocate with
Mr Nakul Mehta and Ms Anne
Mathew, Advocates for R-2.
Mr Akshay Bhardwaj proxy counsel
for Mr Balvinder Ralhan, Advocate
for R-3/Oriental Bank of Commerce.
Mr O.P. Gaggar and Ms Runashree
Saikia, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

04.01.2017

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

"a) Direct the Respondent No.1 to deposit a sum of Rs.33,27,53,469/- [Rs. 7,59,20,566 /- due towards certified bills along with interest of Rs. 3,41,32,016/- upto 05.05.2016, retention money of Rs. 2,26,57,415/-, Rs. 18,53,82,353/- as uncertified dues on account of compensation for extended stay at the project, Rs. 1,14,68,748/- payable for excavation work and other works done in terms of Work Order raised in RA BILL No. 36 and VAT reimbursement amounting to Rs. 6,72,631/- and

Service tax reimbursement amounting to Rs.25,19,740/-, with this Hon'ble Court and direct that the said amount shall remain deposited during the pendency of the arbitral proceedings;

- b) Restrain the Respondent No. 1, their servants, officers or legal representatives from invoking the Bank Guarantee for Advance bearing nos. 01700003315 of Rs. 2,40,00,000/ dated 24.03.2015, lastly extended on 04.03.2016 having claim period upto 30.09.2016 and Bank Guarantee for Contract Performance bearing No. 50350IGL0008211 dated 23.09.2011, lastly extended on 04.03.2016 having claim period upto 22.12.2016;
- c) Restrain the Respondent No. 3 and 4, their servants, officers or legal representatives from encashing the Bank Guarantee for Advance bearing nos. 01700003315 of Rs. 2,40,00,000/ dated 24.03.2015, lastly extended on 04.03.2016 having claim period upto 30.09.2016 and Bank Guarantee for Contract Performance bearing No. 50350IGL0008211 dated 23.09.2011 for an amount of Rs. 2,40,00,000/-, lastly extended on 04.03.2016 having claim period up to 22.12. 20 16;
- d) Direct the Respondent No. 1 to place on record before this Hon'ble Court, its duly audited financial statements for the last 5 years, including and not limited to its Balance Sheets, P & L accounts and statement of its assets and liabilities;
- e) Direct the Respondent No.2 to place on record before this Hon'ble Court the duly audited statement of account/ ledgers maintained by the Respondent No. 2 pertaining to the amounts owed by it to the Respondent No. 1 in all its contracts/work order entered with the Respondent No. 1;
- f) In the alternative to Prayer a) above, direct the Respondent No.2 to deposit a sum of Rs.33,27,53,469/- (as detailed

above), with this Hon'ble Court from the sum payable by the Respondent No. 2 to Respondent No.1, and direct that the said amount shall remain deposited during the pendency of the arbitral proceedings;

- g) During the pendency of the instant petition, restrain the Respondent No.2 from disbursing any sum(s) to Respondent No.1;
- h) During the pendency of the instant petition, once the statement of assets is submitted by the Respondent No. 1 before the Hon'ble Court, restrain the Respondent No.1 from alienating its assets to the extent of dues payable by Respondent No.1 to the Petitioner;
- i) Pass ad-interim ex-parte order in terms of prayers (a) to (h) above in favour of the Petitioner and against the Respondents;"

2. Insofar as the disputes between petitioner and respondent no.1 are concerned, the same have been referred to arbitration and, therefore, the petitioner would be at liberty to agitate and claim such reliefs before the Arbitral Tribunal.

3. Insofar as the reliefs relating to respondent no.2 is concerned, Mr Sibal, learned counsel appearing for respondent no.2 states that there is no privity of contract between petitioner and respondent no.2. He further states that there are disputes between respondent no.1 and respondent no.2 and it is the respondent no.2's stand that it owes no money or funds to respondent no.1.

4. Be that as it may, in my view, the interest of the petitioner would be sufficiently protected if respondent no.2 is directed to give a prior intimation

of two weeks to the petitioner before making any payment to the respondent no.1; either voluntarily at the behest of respondent no.1 or in compliance of any order of a court or tribunal. The petitioner would be at liberty to approach the Court or the Arbitral Tribunal to seek appropriate reliefs as and when such occasion arises.

5. It is clarified that nothing stated herein shall be read as an expression of the opinion as to the merits of the claim as the same have not been examined by this Court. The parties are at liberty to approach the Arbitral Tribunal for such relief as may be advised.

6. The petition is disposed of with the aforesaid observations. The pending application also stands disposed of.

JANUARY 04, 2017
RK

VIBHU BAKHRU, J