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

Reserved on : 23.5.2017

% Pronounced on 17.07.2017

\+ OMP (I) (COMM.) 242/2016

V.K. SOOD ENGINEERS AND CONTRACTORS..... Petitioner
Through Ms.Anusuya Salwan, Adv. and Mr.Abhishek Pundir, Advs.

Versus

NORTHERN RAILWAYS ..... Respondent
Through Ms.Geetanjali Mohan, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. At the outset I may note that the matter was fixed for pronouncement on 7.7.2017. However, some factual clarifications were felt necessary before the order could be pronounced. Mrs. Anusuya Salwan, Advocate, has appeared and her submissions on 12.07.2017.

2. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking stay of the order dated 31.03.2016 passed by the respondent by which the amounts payable to the petitioner are being kept in a miscellaneous account and to stay the implementation of the letter dated 20.01.2015 issued by the respondent qua M/s. V.K.Sood Engineers and Contractors i.e. petitioner and

to direct the respondent to release the admitted payments payable to the petitioner.

3. It is the case of the petitioner that the respondent invited tenders for the work of construction of road/bridges in lieu of level crossing at Garhmukteshwar on Moradabad-Ghaziabad Section. The petitioner was awarded the work on 03.01.2012 and a contract was executed in Delhi on 30.03.2012. It is the case of the petitioner that it has been carrying out the work and has been requesting for release of its payments which are being needlessly withheld by the respondent. On one of the visits to the office of the respondent, the petitioner was informed that the payments were not being released in view of an order circulated by the respondent for recovery of excess payment made to a concern V.K. Sood Engineers and Contractors-DDS (JV). It is the case of the petitioner that the recovery order has been passed with regard to a sole proprietorship concer of Mr. Vaneet Kumar Sood which has nothing to do with the petitioner. It is urged that the petitioner firm comprises Mr.Puneet Kumar Sood and Mr. Promod Kumar Bhatia. The partner, namely, Mr. Puneet Kumar Sood is the brother of Mr. Vaneet Kumar Sood both being the sons of Mr.V.K.Sood on whose name the two concerns are being run.

4. There is a long dispute pending between the respondent and Mr.Vaneet Kumar Sood/V.K.Sood Engineers and Contractors-DDS(JV). They had been awarded a contract on 21.06.2006 for fabrication, supplying, assembling, erection of Rocker and Roller bearing with base plate etc. Disputes having arisen between the Railways and the said concern, on a petition filed before this court, Mr.Justice Jagnanda Rao (Retd.) by order dated 21.11.2013 was appointed as the arbitrator. The respondent claims that

on account of some issue of price variation clause, a sum of Rs.1.79 crores has been over paid to V.K.Sood Engineers and Contractors-DDS (JV) and hence, the respondent seek to recover the said sum of Rs.1.79 crores from them. It is stated that the said concern challenged the said demand letter by filing a petition under Section 9 of the Act being OMP 71/2015 in which a stay order was passed on 20.01.2015 by this court restraining the respondent from taking coercive steps to recover the said sum of Rs.1.79 crores. On 20.01.2015, the respondent issued an order to all the divisions of the Railways stating that an amount of Rs.1.79 crores be recovered from M/s V.K.Sood Engineers and Contractors (i.e. petitioner) on account of excess payment made. It is urged that the petitioner firm is totally distinct from V.K.Sood Engineers and Contractors-DDS (JV) which is a proprietorship concern of Mr.Vaneet Kumar Sood and the acts of the respondent are illegal. Hence, the present petition has been filed.

5. I have heard learned counsel for the parties.

6. Learned counsel appearing for the petitioner has pointed out that the petitioner, namely, V.K. Sood Engineers and Contractors is a partnership firm of Mr. Puneet Kumar Sood and Mr. Promod Kumar Bhatia. In fact Mr.Promod Kumar Bhatia has only 1% share in the firm and it is wholly run by Mr. Puneet Kumar Sood. On the other hand, V.K. Sood Engineers and Contractors -DDS (JV) is a proprietorship concern of Mr.Vaneet Kumar Sood. It is stated that the petitioner cannot be made to bear the liabilities of a different entity merely because there is some similarity in the names of the two concerns. The sum of Rs.1.79 crores is not to be recovered from the petitioner. Hence, it is urged that the communications dated 31.03.2016 and 20.01.2015 are liable to be stayed.

7. Learned counsel appearing for the respondent submits that the respondent are to recover the sum of Rs.1.79 crores from V.K. Sood Engineers and Contractors-DDS (JV). It is urged that initially the partnership firm of the petitioner did comprise of Mr. Puneet Kumar Sood and Mr.Vaneet Kumar Sood who had 1% stake in the petitioner firm. It is pointed out that subsequently, the petitioner claimed that there has been a change in the partners and that now the petitioner firm comprises of Mr.Puneet Kumar Sood and Mr. Promod Kumar Bhatia. It is urged that nothing has been placed on record to show that the petitioner is a reconstituted firm. Even Form A under the Partnership Act has not been filed. Hence, in the absence of any proof that the petitioner is a reconstituted firm, it is urged that even the arbitration clause would not apply as the petitioner would not be a party to the arbitration agreement and the present petition would not be maintainable. Reliance is placed on Clause 52 of the GCC to contend that the respondent has a right to withhold the dues.

8. I may note that the reply of the respondent is not on record. The record reveals that the reply filed were returned under objections. Learned counsel for the petitioner has filed in court a copy of the reply of the respondent which had been served on her.

9. It may also be noted that this court on 31.8.2016 disposed of this petition staying the operation of the order dated 31.3.2016 and implementation of letter dated 20.1.2015. The respondent was directed to without prejudice release the admitted payments payable to the petitioner within four weeks.

10. The respondents, however, challenged the said order before the appellate court. The Division Bench by its order dated 21.4.2017 set aside

order of the learned Single Judge noting that the order of the learned Single Judge appears to contain no reasons. Further, the Division Bench held that it was not clear as to whether the petitioners have invoked the arbitration clause inasmuch as under the amended act, the parties have to mandatorily seek an arbitration within 90 days. In the course of proceedings before the Division Bench, the respondent had deposited Rs.44 odd lacs. The court directed that the same shall continue to be treated as deposit subject to orders of the Single Judge.

11. I may first look at the letter dated 20.01.2015. The letter states that a sum of Rs. 1.79 crores is to be recovered from V. K. Sood Engineers and Contractors (Petitioner) on account of excess payment made under the price variation clause and hence, the amount be recovered from the pending dues of the said concern. Similarly, letter dated 31.03.2016 is written by the respondent which states a RCC for a sum of Rs.51,37,707/- has been prepared for the petitioner but the same may be deposited in a miscellaneous account till further advice.

12. Some of the facts are not in dispute. The petitioner initially is a partnership firm where Mr. Puneet Sood had 99% interest and Mr.Vaneet Sood had 1% interest. It is their case that from April 2014 the firm has been reconstituted and in the place of Mr.Vaneet Sood Mr.Pramod Kumar Bhatia has become a partner of 1%. The grievance of the petitioner is that a bill for Rs.51,37,707/- was prepared by the respondent payable to the petitioner but the same has been kept in a miscellaneous deposit.

13. Another aspect is that the entity V.K.Sood Engineers and Contractors–DDS (J.V.) is a different and distinct entity from the petitioner, The amount claimed by the respondent is actually the liability of this entity.

This entity has also initiated arbitration proceedings against the respondent. This Court in a petition under Section 11(6) of the Act on 21.11.2013 appointed Mr.Justice Jagnanda Rao (Retd.) as the Sole Arbitrator. In OMP 71/2015 filed by the said entity, this court on 20.01.2015 restrained the respondents from taking coercive steps against the petitioner therein pursuant to letters dated 9th and 23rd December 2014 during pendency of the arbitration proceedings. The relevant portion of the order reads as follows:-

> "2. Since an Arbitrator is already in place, the Court directs that subject to any order that may be passed by the learned Arbitrator, in an application that may be filed under Section 17 of the Arbitration and Conciliation Act, 1996, including modifying the present order, the Respondent is restrained from taking any coercive steps against the petitioner pursuant to the letters dated 9th and 23rd December 2014 (Annexures A-6 and A-7 respectively) during the pendency of the arbitration proceedings."

14. The above order of the learned Single Judge was upheld by the Division Bench in FAO(OS)53/2015 on 20th September 2015. An SLP filed against the order of the Division Bench was also dismissed on 12.8.2016 being SLP No.14809/2016. It is clear from the said interim order that the respondents have been restrained from taking coercive steps to recover the said dues. The dues have not yet been crystallized and adjudicatory proceedings to that effect are pending. The respondents cannot sidestep the said injunction order and recover the dues from the petitioner merely because at one stage Mr. Vaneet Kumar Sood was a partner in the petitioner firm till April 2014 having 1% stake only. At best, the 1% share of Mr. Vaneet Kumar in the petitioner firm in the assets and profits can be

recovered/attached. The petitioner firm has nothing to do with the alleged liability of M/s.Vaneet Kumar Sood Engineers and Contractors-DDS (JV).

15. The plea of the learned counsel for the respondent that there is nothing on record to show that the petitioner is a reconstituted firm is misplaced. The admitted fact is that Mr.Puneet Kumar Sood is the main partner who is a petitioner in the present petition also. The rights and liabilities of the parties including the partners of the firm which was awarded the work on 31.1.2012 by the respondent do not disappear as is sought to be argued.

16. Regarding invocation of arbitration, learned counsel for the petitioner has pointed out that they have invoked the arbitration clause by notice dated 24.4.2017.

17. The principles for grant of injunction order under Section 9 of the Act are well known. The Division Bench of this High Court in the case of ***M/s. Anantji Gas Service vs. Indian Oil Corporation, 2014 SCC OnLine Del. 3732*** held as follows:-

> "10. The law is well settled that the power granted to the Civil Court under Section 9 of the Act is akin to Order 39 Rules 1 & 2 of CPC, 1908 and therefore the court has to satisfy itself that the petitioner has established the three cardinal principles of prima facie case, balance of convenience and irreparable loss in case no protection is extended by way of interim measure under Section 9 of the Act. Vide *Adhunik Steels Ltd. v. Orissa Mangenese and Minerals Pvt. Ltd., (2007) 7 SCC 125 and Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation (2007) 6 SCC 798*."

18. The petitioners have made out a prima facie case. The act of the respondents in withholding the dues of the petitioner on account of alleged liability of M/s.Vaneet Kumar Sood Engineers and Contractors-DDS (JV) another entity is prima facie illegal. It is also contrary to the interim order

dated 20.01.2015 passed by this Court in O.M.P. 71/2015. Balance of convenience is in favour of the petitioner as having expanded its resources in completing the work of the respondents they cannot be penalized in this manner.

19. Accordingly, I stay the operation of the letter dated 20.01.2015 by which a recovery of Rs.1.79 crores has been ordered against the petitioner. I also stay the operation of the order dated 31.03.2016 by which amounts have been directed to be deposited in a miscellaneous account. Interim orders shall operate till conclusion of the arbitration proceedings in this case.

20. The Registry may release the amount of Rs.44,09,733/- plus interest lying deposited to the petitioner pursuant to orders of the Division Bench dated 7.3.2017 in FAO(OS) (Comm.) 5/2017 on an undertaking being given by the petitioner to this court to abide by any further orders of this court or the learned Arbitrator.

21. The present petition stands disposed of.

(JAYANT NATH)
JUDGE

JULY 17, 2017
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