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

+ **FAO(OS) 293/2016**

DEPARTMENT OF POSTS Appellant
Through Mr. Anuj Aggarwal, Advocate.

versus

EAST INDIA TECHNOLOGIES PVT LTD Respondent
Through Mr. D.D. Dayani, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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11.05.2017

The impugned order dated 6th August, 2012 passed in OMP No.876/2011 is a short one and reads as under:-

“1.Learned counsel for the Respondent/applicant points out that the Bank Guarantee (‘BG’) which was directed to be kept renewed by the Petitioner for a period of six months by order dated 25th November 2011 has not been kept renewed till date.

2. Learned counsel for the Petitioner/non-applicant points out that by order dated 25th November 2011 this Court had directed the Petitioner to renew the said BG for a period of six months and it was so renewed. He undertakes that the said BG will be kept renewed during the pendency of the arbitral proceedings and will be subject to further orders to be passed by learned Arbitrator. The said statement is taken on record.

3. Learned counsel for the Petitioner informs the Court that under the contract in question there is a named Arbitrator. He states that the Petitioner on 14th March 2003 had already requested the named Arbitrator to enter upon reference. Learned counsel for the Respondent states that he has no instructions on this aspect.

4. The Respondent is directed to ensure that the named Arbitrator enters upon reference, not later than eight weeks from today.

5. The interim order passed by this Court on 25th November 2011 will continue till such time the Arbitrator passes any order on any application that may be filed by either party under Section 17 of the Arbitration and Conciliation Act 1996 ('Act'), seeking interim relief.

6. This is subject to the Petitioner keeping the BG No. 3035610BG2200092 dated 13th December 2011 renewed during the pendency of the arbitral proceedings. It will be open to the Arbitrator to pass appropriate orders in variation of the present order in an application that may be filed by the parties under Section 17 of the Act.

7. The petition and the application are disposed of in the above terms.”

2. The contention of the appellant is that the arbitration clause contained in Volume 3 of the Request For Proposal (RFP) documents is not applicable and cannot be invoked as the said clause is applicable once the contract or agreement was signed. In the present case, the contract or agreement was never signed. The contract was not signed and executed because of the defaults and faults made by the respondent.

3. The respondent, on the other hand, contests the said submission and submits that arbitration clause would be applicable and binding even if the contract was not signed as the RFP was signed by the respondent.
4. We find that the impugned order dated 6th August, 2012 does not deal with the said aspect and, on the other hand, in paragraph 5 directs that the interim order passed on 25th November, 2011 would continue till the time the Arbitrator passes an order on any application filed under Section 17 of the Arbitration and Conciliation Act, 1996.
5. In view of the submissions made by the appellant, which we find were also raised and mentioned in the reply filed by the appellant before the single Judge in OMP No.876/2011, an anomalous situation has arisen.
6. Given the aforesaid facts, we are inclined to set aside the impugned order and remit the matter to learned Single Judge to decide the aforesaid OMP including the question of stay.
7. In order to cut short any delay, the parties are directed to appear before the single Judge on 6th July, 2017. The interim order would continue till the said date and would be subject to order that may be passed by the learned Single Judge, thereafter.
8. The appeal is disposed of, without any order as to costs.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

MAY 11, 2017/NA