

\$~16

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

% Judgment delivered on: 09.10.2017

+ OMP (I) (COMM.) 408/2017

M/S ERA INFRA ENGINEERING LTD. Petitioner

versus

STEEL AUTHORITY OF INDIA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Manoj Kumar Singh with Mr.
Rahul Pandey, Advocates.

For the Respondents : Mr. Sanjay Jain, ASG with Ms. Veronica Mohan,
Mr. Kartik Rai, Mr. Anshul Rawat and Ms.
Sukanya Basu, Advocates and Mr. Ashish Rastogi,
Dy. Manager (Law), SAIL

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

09.10.2017

SANJEEV SACHDEVA, J. (ORAL)

IA No.11597/2017 (exemption)

Exemption is allowed subject to all just exceptions.

OMP (I) (COMM.) 408/2017 & IA No.11596/2017 (stay)

1. The petitioner, by this petition under Section 9 of the Arbitration & Conciliation Act, seeks a restraint on the respondent

from floating and awarding a tender for the balance work of the project which has been awarded to the petitioner.

2. The petitioner was awarded the work for execution of structural work for setting up of Basic Oxygen Furnace (BOF) and Continuous Casting Shop (CCP) (Pkg. No.033-B) at Bhilai Steel Plant, Bhilai vide Agreement dated 30.09.2009.

3. As per the petitioner, the stipulated period for completion of the project was 24 months. The petitioner's case is that the project could not be completed within the stipulated period on account of reasons beyond the control of the petitioner and for delay attributable solely to the respondent.

4. It is further submitted that post the award of the contract, there were several deviations and increase in the scope of the work requiring further additional time for completion of the project. It is contended that the time for completion of the contract has now been extended till 31.12.2017.

5. The petitioner approached this Court as the respondent had invited tenders by the Notices Inviting Tenders dated 26.09.2017, 28.09.2017 and 29.09.2017. Learned counsel for the petitioner submits that the tenders dated 28.09.2017 and 29.09.2017 were not in the knowledge of the petitioner when the petition was filed as they were limited tenders.

6. Learned counsel for the petitioner submits that the cause of action arose as the respondent had sought to invite bids for completion of a portion of the balance work which already stands allotted to the petitioner and for which extension of time has been granted till 31.12.2017.

7. Learned Additional Solicitor General appearing for the respondent disputes the contention that the delay is attributable to the respondent. He, however, submits that the petitioner was negligent in executing the contract and the delay is attributable to the petitioner.

8. Without prejudice to the said contentions, learned ASG submits that the respondent has an absolute right to terminate the contract at any stage. He submits that no notice of termination has yet been issued to the petitioner.

9. Learned ASG submits that with a view to avoid any delay in execution of the work, the tenders have been invited so that as and when and, if required, a bidder is finalised and the petitioner is required to be substituted, appropriate action, as stipulated in the contract Agreement dated 30.09.2009, could be initiated.

10. Learned ASG further submits that the steps to invite bids have been taken so as to avoid any delay and hiatus in the continuance of the execution of the project, which is of public importance and, in case need arises to terminate the contract of the petitioner, appropriate

action, as stipulated in the Agreement dated 30.09.2009, shall be taken.

11. Learned ASG submits that prior to the award of contract to any third party, appropriate steps, in terms of Agreement dated 30.09.2009, shall be taken qua the petitioner.

12. In view of the above statement given by the learned ASG, the petition is disposed of with liberty to the petitioner to take such remedies, as may be available in law, impugning any adverse action that may be taken or threatened to be taken by the respondents against the petitioner with regard to the subject contract.

13. The petition is, accordingly, disposed of in the above terms.

14. It is clarified that this Court has neither examined nor considered the contentions of the petitioner or the respondent on merits of their respective stands.

15. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 09, 2017
st