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

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Judgment delivered on: 17.10.2017

+ **O.M.P.(I) (COMM.) 427/2017**

SATISH BUILDERS

..... Petitioner

versus

GOVT. NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Sunil Kumar Mittal, Mr Anshul Mittal,
Mr Sushant Bali and Mr Harshit Vashisht,
Advocates.

For the Respondent : Mr Anuj Aggarwal and Ms Niti Jain,
Advocates with Mr Vijay Kumar Gupta,
Executive Engineer, PWD.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

17.10.2017

IA No.11988/ 2017(exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 427/2017

1. By this petition, under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks appointment of a Local Commissioner for carrying out the work of Joint Measurement and alternatively, a direction to the respondent to carry out a joint measurement of the work executed at site and also to inventorise the unused goods, tools and machinery lying at the site.

2. Further direction is sought to the respondent to preserve the relevant records pertaining to the execution of the work under the Contract between the parties.

3. As per the petitioner, respondent invited a e-tender for the work *“Construction of Additional SPS Class Rooms in existing premises under jurisdiction Zone-18 of District West-B (Priority-I)(SH :- C/o SPS Type Rooms, Labs, MP Halls i/c Internal & External Water Supply, Sanitary Installation and Electrical Installation, Development of Site and Fire Fighting System etc. at Government School, G-Block Vikaspuri & Shiv Vihar)(Package-C).*

4. The petitioner submitted its bid, which was accepted and the Contract was awarded.

5. As per the petitioner, the respondent after award of the Contract reduced the scope of work. The petitioner had brought material for the execution of the entire awarded Contract under instructions and directions of the respondent and, as required, by the Contract between the parties.

6. It is contended that the work which the petitioner was permitted to execute was duly executed and unused material brought by the petitioner for execution of the balance work is still lying at the site.

7. The petitioner has sought to handover the possession of the site to the respondent after the due verification of the work executed as

well as the unused material lying at the site.

8. It is contended that the respondents have refused to carry out the joint measurement of the executed work as well as the unused material, tools and machinery lying at the site.

9. The petitioner has further contended that there were defaults on the part of the respondent leading to the petitioner taking remedies under the Act.

10. Learned counsel appearing for the respondent disputes the contention of the petitioner that there were any defaults on the part of the respondent and contends that the default was on part of the petitioner.

11. Learned counsel for the respondent further disputes the contention that the scope of work was reduced or that petitioner was directed to bring on site material, which was not required for the execution of the work.

12. Learned counsel for the respondent further contends that the unused material, which was brought by the petitioner or at the site, which was not required for execution of the awarded Contract is the responsibility of the petitioner and the petitioner is to remove it from the site prior to handing over the site.

13. Since the controversy, in the present petition is very limited, this Court is not called upon to examine as to which of the parties, if

at all, is at breach of the respective obligations under the Contract. Even the question as to whether the scope of the work was reduced or that the petitioner was under an obligation to bring material for execution of the work and the said material is lying unused at the site is not required to be gone into in these proceedings. The same would be an issue, which would be raised before and decided by the Arbitrator in terms of the Contract between the parties. All that this Court is called upon under Section 9 petition is to take interim measures for protection of the subject matter of the disputes, which is the extent of the work already carried out by the petitioner.

14. The main relief sought by the petitioner is to have a joint measurement of the work executed as well as of the unused material, tools and machinery lying at the site.

15. The Respondents have no objection to the joint measurement, without prejudice to their rights and contentions.

16. In view of the above, this petition is disposed of as under:-

- (i) One Engineer shall be nominated by the petitioner and one by the respondent. The said Engineers shall jointly measure the extent of work claimed to have been executed by the petitioner.
- (ii) The Engineer shall be accompanied by such representatives of the parties, as may be required, for the purposes of carrying out the joint measurement.

- (iii) In case there is any dispute as to the extent of the work carried out by the petitioner, the process of joint measurement shall not be stalled. The entire measurement shall be completed and objection, if any, of the petitioner or the respondent shall be separately recorded by the Engineers.
- (iv) The Engineers would not be called upon to decide the said objections, it would be left to be decided by the Arbitral Tribunal in accordance with the terms of the Contract.
- (v) The Engineer shall also measure the unused material lying at the site and in case the respondent wants any objections to be recorded with regard to the said unused material, the same shall be duly recorded by the Engineer.
- (vi) The Engineer shall also prepare an inventory of the plant, machinery tool and raw material lying at the site.

18. It is clarified that this joint measurement is without prejudice to the rights and contentions of the parties and the parties would be at liberty to raise all objections and claims, as admissible in law before the Arbitral Tribunal.

19. The process of joint measurement shall be commenced at the site from 11 AM on 26.10.2017.

20. It is further directed that the respondent shall preserve the relevant records as well as report of the joint measurement and the memorandum of the objections raised by the parties in terms of the present order.

21. The proceedings undertaken by the two Engineers in terms of this order shall be counter-signed by both the Engineers and shall be preserved by the respondent to be produced before the Arbitral Tribunal.

22. The respondent shall also preserve the relevant records pertaining to the execution of the work to be produced before the Arbitral Tribunal, if so directed by the Tribunal.

23. The entire process of joint measurement shall be concluded within a period of two weeks from the date of its commencement.

24. The petition is disposed of in terms of this order.

25. The petitioner shall ensure compliance of Section 9(2) of the Act.

26. Order *Dasti* under signatures of the Court Master to both the parties.

SANJEEV SACHDEVA, J

OCTOBER 17, 2017/‘Sp’