jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1015 OF 2018
IN
APPEAL NO. 368 OF 2010
IN
ARBITRATION PETITION NO. 369 OF 2007

Larsen & Toubro Ltd. … Applicant / Ori. Respondent

In the matter between

Maharashtra State Road Corporation Ltd. … Appellant

V/s.

Larsen & Toubro Ltd. … Respondent

Mr. Atul Rajadhyaksha, Senior Counsel with Mr. Kedar Wagle, Mr. Sagar Wagle and Ms. Sayli Puri, for the Applicant / Respondent.
Mr. Prashant Chavan, with Ms. Priyanka Mitra i/b. M/s. Cyril Amarchand Mangaldas for the Appellant.

CORAM: B.R. GAVAI, &
RIYAZ I. CHAGLA, JJ.
DATE: 6TH DECEMBER, 2018.

PC:-

1. By way of present Notice of Motion, the Applicant has prayed for permission to unconditionally withdraw the amount of Rs.6,08,29,232/- deposited by the Respondent pursuant to the order dated 6th March, 2018 as modified by order dated 19th March, 2018.

2. On account of dispute between the Appellant and the Respondent, the matter was referred to arbitration of one Mr. Arun K. Mago, Former Chief Secretary, Government of Maharashtra as

per the order passed by this Court on 1st August, 2006. The learned Arbitrator passed an award on 16th May, 2007 in favour of the present Appellant. Being aggrieved thereby Petition came to be filed before learned Single Judge of this Court by the Respondent. The learned Single Judge dismissed the said Petition vide order dated 17th December, 2009.

3. The Appellant took out Notice of Motion No. 155 of 2018 seeking a stay of execution proceedings. The Division Bench of this Court vide 6th March, 2018 recorded the submission of the present Appellant that the amount due and payable by the Respondent to the present Appellant is to the tune of Rs.12,16,58,465/-. The Division Bench vide the aforesaid order directed the Applicant / Appellant to deposit 50% of Rs.12,16,58,465/- within six weeks from the date of the order and furnish FDR of nationalised bank for remaining amount. On complying with such conditions the execution of the award was directed to be stayed. Pursuant to the said order, the Appellant has furnished the FDRs.

4. Heard, Mr. Rajadhyaksha, the learned senior counsel for the Applicant / Respondent and Mr. Chavan learned counsel for the Appellant.

5. The Application is opposed by the learned counsel for the Appellants and he has prayed for expeditious hearing of the Appeal. The learned judges of the Division Bench vide order dated 6th March, 2018 has specifically rejected the said prayer of expedition on the ground that there are older Appeals pending for adjudication. For the same reason, we are not inclined to entertain the same prayer.

6. Mr. Chavan has alternatively prayed for directing the Respondents to furnish bank guarantees for the said amount and only then the amounts should be permitted to be withdrawn.

7. The award is basically in the nature of a money decree. The said award has already been upheld by the learned Single Judge of this Court. It would be relevant to refer to the averments made in the Affidavit filed by Mr. Puran Kumar.

> ***14. "Applicant is a financially sound company and profitable entity in existence for over 7 decades. Applicant is a major technology, engineering, construction, manufacturing and financial services conglomerate, with global operations. The Applicant addresses critical needs in key sectors – Hydrocarbon, Infrastructure, Power, Process Industries and Defence – for customers in over 30 countries around the world. It has its registered office at Ballard Estate, Mumbai within the jurisdiction of this Hon'ble Court. The sales turnover of the Applicant for the financial year ended March 2017 was Rs.66,301.35 Crores. Its net worth for the financial year ended 31st March, 2017 was Rs.45,639.13 Crores and it had assets of Rs.1,02,196.82 Crores. I crave leave to refer to any***

> ***rely upon the financial statement at the time of hearing of the Application. The same would demonstrate the financial strength of the Applicant".***

8. In that view of the matter, we find that if the Respondent is directed to pass a resolution of its Board of Directors that in the event the Appellant succeeds in the Appeal and this Court directs any amount to be refunded to the Appellant along with the interest, the same shall be done by the company within a period of four weeks from the date of the order of this Court, it will substantially safeguard the interest of the Appellant. In that view of the matter, the Applicant is permitted to withdraw 50% of the amount of Rs.12,16,58,465/- deposited by the Respondent in this Court, on their filing certified copy of the resolution of the Directors of Respondent's Company to the effect that in the event if this Court directs any amount to be refunded to the Appellant along with the interest thereon, the same shall be done within a period of four weeks from the date of order of this Court.

9. Notice of Motion is disposed of. The Prothonotary and Senior Master of this Court to act accordingly.

(RIYAZ I. CHAGLA J.) **(B.R. GAVAI,J.)**