

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****NOTICE OF MOTION NO. 615 OF 2017****IN****COMM.ARBITRATION PETITION NO. 483 OF 2017****Jawaharlal Nehru Port Trust****..... Applicant/Petitioner****VERSUS****M/s.IMARTEK Sdn.Bhd.****..... Respondent**

Mr.Aspi Chinoy, Senior Advocate, a/w. Mr.Hemant Prabhulkar, i/b. Jurisperitus Mumbai for the Applicant/Petitioner.

Mr.Naresh Thacker, a/w. Ms.Rhia Marshall, Ms.Vaishali Chillakuru, i/b. Economic Laws Practice for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 8th MARCH, 2018****P.C.**

By this notice of motion, the applicant seeks stay of the impugned order rendered by the arbitral tribunal on 19th June, 2017. By a separate order passed by this court, the arbitration petition has been already admitted.

2. A perusal of the award indicates that the arbitral tribunal has directed the petitioner herein to refund/return the monies which it has realized by encashing the bank guarantees given by the respondent with interest at the rate of 12% per annum from the date of realization. Similarly the arbitral tribunal has directed the respondent herein to return/refund the monies which it has received on 6th August, 2007 under the Letter of Credit dated 07/11-04-2007 to the petitioner herein with interest at the rate of 12% per annum from the date of the receipt.

3. The applicant has clarified in the affidavit in rejoinder that even if this award implemented as it is in terms of the directions issued by the arbitral tribunal, the petitioner will have to recover a substantial amount from the respondent. This position is not disputed by the respondent by filing any affidavit in sur-rejoinder.

4. Learned counsel for the respondent states that without prejudice to his rights and contentions, his client would make an application under section 33 of the Arbitration and Conciliation Act, 1996 before the arbitral tribunal on the ground that the directions issued in the operative part of the award is not in conformity with the reasons recorded by the arbitral tribunal.

5. Mr.Chinoy, learned senior counsel for the applicant states that his client has already impugned the arbitral award and the same is admitted and that his client is not agreeable for any interpretation or clarification of the award by the arbitral tribunal at this stage.

6. I am *prima facie* inclined to accept the averments made by the applicant in the affidavit in rejoinder. The applicant has thus made out a case for grant of stay of the impugned award without imposing any condition in these circumstances. The impugned award is accordingly stayed unconditionally.

7. Notice of motion is made absolute in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]