

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM.ARBITRATION PETITION (L) NO.1486 of 2018**

Sri Sai Krishna Constructions .. Petitioner
vs
Glove Infracom & ors .. Respondents

Mr.Ankit Lohia with Mr.Bharat Jain,Ms.Anubhuti Gandhi
I/b M/s IC Legal for Petitioner
Mr.Manoj Kumar for Respondent no.3.

**CORAM: G.S.KULKARNI, J
DATE : 6th DECEMBER, 2018**

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Heard learned counsel for the parties.

2. This petition under section 9 of the Arbitration and Conciliation Act, 1996, prays for interim measures pending the arbitration proceedings. Disputes and differences have arisen between the parties in relation to a contract executed by the parties under the agreement dated 28.9.2018 which pertained to the work of six laning of Bihar/Jharkhand Border (Chordaha) to Gorhar Section of National Highway No.2 from Km 249.525 to 320.810 in the State of Jharkhand under NHDP Phase V. The respondent is a sub-contractor of the principal contractor Reliance Infrastructure Limited who was awarded a contract by the National Highway Authority of India for undertaking construction of the said

contractual work. The petitioner in pursuance of clause 19 of their agreement entered with the respondents deposited an amount of Rs.75,00,000/- with the respondent. As also a bank guarantee for an amount of Rs.7,99,20,000/- was submitted as performance guarantee being 5 % of the value of the work contracted.

3. The case of the petitioner is that despite repeated requests, the respondents did not make available to the petitioner the site. The petitioner had mobilised resources by spending substantial amounts, however no work could be started. The petitioner accordingly entered into correspondence with the respondents. The petitioner recorded its grievances by its letter dated 20.10.2018 (Exhibit B) and by a further letter dated 31.10.2018 addressed to the respondent. There is another letter dated 16.11.2018 whereby again the petitioner requested the respondent for compliances and also recorded that the respondents should make available the work site. The petitioner recorded that despite odds, the petitioners were still ready and willing to execute the contractual work. It was pointed out that the petitioner had incurred huge expenditure for procuring and mobilising additional machinery and towards labour charges. It was pointed out that the expenditure incurred

was to the tune of Rs.50 lacs. As there was no response to any of the grievances and communications, the petitioner has filed the present petition praying for the following reliefs :

“(i) this Hon'ble Court be pleased to restrain the respondent no.1 and its partners claiming through and/or under them by a temporary order and injunction from invoking/encashing the said PBQ dated 27th September 2018 for Rs.7,99,20,000/- (Rupees Seven Crores Ninety Nine Lacs and Twenty Thousand only);

(ii) this Hon'ble Court be pleased to restrain the respondent no.3 by a temporary order and injunction from paying any amounts under the said PBQ dated 27th September 2018 for Rs.7,99,20,000/- (Rupees Seven Crores ninety Nine lacs and Twenty Thousand only);

(iii) this Hon'ble Court be pleased to direct the respondent no.1 to deposit the sum of Rs.75,00,000/- (Rupees Seventy Five Lacs only) paid pursuant to the said Agreement with the Prothonotary and Senior Master, High Court, Bombay;

(iv) In the alternative a prayer 'a (iii) this Hon'ble Court be pleased to restrain the respondent no./1 by an order and injunction from utilizing the sum of Rs.75,00,000/- (Rupees Seventy Five Lacs only) paid pursuant to the said Agreement.

b. Ad-interim reliefs in terms of prayers 'a (i) a (ii) and a (iii) or a (iv) be granted to the petitioner.”

4. This petition was heard initially on 27.11.2018. Mr.Ansari appeared for respondent no.1 and made a statement that so far the respondents have not invoked any of the bank guarantees. The said statement was accepted. Thereafter the petition was listed on 3.12.2018. The said statement of the respondents as recorded in the order dated 27.11.2018 has continued to operate till date. The respondents have

chosen not to file a reply affidavit.

5. Mr.Ansari learned counsel for the respondents though have opposed the petition, on instructions submits and confirms that the respondents are not immediately inclined to invoke bank guarantee and in the event the bank guarantee is to be invoked, the respondents shall give 15 days notice to the petitioners. Statement of Mr. Ansari is accepted.

6. As regards the merits of the case, from the submissions of Mr.Ansari learned counsel for the respondents, it *prima facie* appears that there are disputes between the principal contractor M/s Reliance Infrastructure Limited and the respondents and therefore, there appears to be a situation of a stand still in regard to the contract entered by the respondents with the petitioners, resulting into the site not being made available to the petitioner.

7. During the course of hearing of this petition, on a suggestion made to the parties that disputes and differences, as noted above then needs to be resolved by appointing an arbitrator, the learned

counsel for parties on instructions fairly state that their respective clients are agreeable for the appointment of an arbitrator to arbitrate the disputes between the parties. In view of the above consensus, it would be appropriate and in the interest of justice, that an arbitrator is appointed for adjudication of the dispute between the parties.

8. In regard to the contention of the petitioner that the amount of Rs.75 lacs as received by the respondents under the terms and conditions of the agreement, the said amount certainly needs to be protected, considering the facts and circumstances of the case. *Prima facie* the petitioner has complied its obligation by submitting the bank guarantee to the respondents which is of a substantial amount as also has made deposit of the said amount of Rs.75 lacs.

9. In the above circumstances, in my considered opinion, the present petition needs to be disposed of by the following order :

ORDER

(i) By consent of the parties, Mr.Arif Doctor Advocate is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 28.9.2018.

(ii) The prospective Arbitrator fifteen days before entering a reference shall make a disclosure as per requirement of section 11 (8) read with section 12 (1) of the Act, and shall forward a copy to the Prothonotary and Senior Master of this Court to be placed on record of this application as also forward the same to the respective parties.

(iii) The respondent is directed to deposit Rs.75 lacs in a separate no lien account. Such deposit shall be subject to further orders which would be passed by the learned arbitrator either under proceedings under section 17 of the Act or the final adjudication in the arbitral proceedings as the learned arbitrator may deem proper and appropriate in the facts and circumstances of the case and the rival contentions.

(iv) All contentions of the parties on merits of the matter are expressly kept open.

(v) The above observations made in this order are *prima facie* and are relevant to the adjudication of the present petition under section 11 of the Arbitration and Conciliation Act and thus is not a reflection on the merits of the disputes between the parties.

10. The petition is accordingly disposed of in the above terms. No costs.

{G.S.KULKARNI, J}

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