

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 09TH DAY OF MARCH 2018

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

A.Nos. 5193 and 3144 of 2017
in
O.P.No.390 of 2017

O.P.No.390 of 2017

In the matter of the
Arbitration and Conciliation
Act, 1996;

And

In the matter of arbitration
between M/s.NCC Ltd and BHEL
in Construction of Civil and
Architectural Works for Main
Plant of 2*120 MW Expansion
of Captive Power Plant at
NALCO, Angul, Orissa

And

In the matter of Award dt
22.02.2017.

M/s.Bharat Heavy Electricals Ltd.
No.690, Anna Salai, Nandanam
Chennai-600 035

...Petitioner

Vs.

M/s.NCC Limited
(Formerly Nagarjuna Construction Co. Ltd.)
4th Floor, NCC House, Survey No.64,
Madhapur, Hyderabad-500 081.

..Respondent

A.No. 5193 of 2017

M/s.NCC Limited
(Formerly Nagarjuna Construction Co. Ltd.)
4th Floor, NCC House, Survey No.64,
Madhapur, Hyderabad-500 081.

..Applicant/Respondent

-Vs.-

M/s.Bharat Heavy Electricals Ltd.
No.690, Anna Salai, Nandanam
Chennai-600 035

...Respondent/Petitioner

Application praying that this Hon'ble Court be pleased to direct the respondent/petitioner to pay a sum equivalent to 75% of the Award dated 22.2.2017 in accordance with the Office Memorandum bearing No. N-14070/14/2016-PPPAU dated 05.09.2016 issued by the National Institution for Transforming India (NITI Aayog).

A.No. 3144 of 2017

M/s.Bharat Heavy Electricals Ltd.
No.690, Anna Salai, Nandanam
Chennai-600 035

...Applicant/Petitioner

Vs.

M/s.NCC Limited
(Formerly Nagarjuna Construction Co. Ltd.)
4th Floor, NCC House, Survey No.64,
Madhapur, Hyderabad-500 081.

..1st Respondent/1st Respondent

Application praying that this Hon'ble Court be pleased to stay the Award of the Arbitrator dt 22.02.2017 insofar as the Award awarded Claims under Claim Nos.7 and 9 and Interest to the Respondent and rejected the Counter Claim of the Applicant relating to Liquidated Damages in full and the Counter Claim of the Applicant relating to Risk and Cost recovery in part.

These applications coming on this day before this Court for hearing, the court made the following order:-

The application in A. No.5193 of 2017 has been filed by the respondent in the main original petition, which has been filed against the award of the learned Arbitrator by which one of the claims made by the respondent was allowed and so is the case of the counter claim. The application in A. No.3144 of 2017 has been filed by the petitioner in the

main original petition seeking to stay the award passed. Thus the applicant in A.No.5193 of 2017 has accepted the award as final.

2.Learned counsel appearing for the applicant in A.No.5193 of 2017 would submit that the award being factual and stay not being automatic, coupled with the fact that there is an office memorandum which mandates the respondent/applicant in A.No.3144 of 2017 to pay 75% of the award amount, the application filed will have to be allowed.

3.Learned counsel appearing for the respondent, who is the applicant in A. No.3144 of 2017, would submit that the office memorandum does not have a statutory prescription. Consequently, until and unless the bank guarantee is furnished for the amount to be ordered by this Court, even as per the the above office memorandum, no such payment may be directed to be paid in favour of the applicant in A. No.5193 of 2017.

4.Granted of interim stay is not automatic after the amendment to the Arbitration and Conciliation Act, 1996. A perusal of the award would show that it is a speaking and reasoned award after consideration of the relevant materials available on record. As on today, there is an award in favour of the applicant in A.No.5193 of 2017.

Therefore, in order to balance the interest of both sides, this Court is of the view that while making the interim stay absolute, the applicant in A.No.3144 of 2017, who is arrayed as respondent in A.No.5193 of 2017 is to be directed to pay 50% of the award amount on condition that the applicant in A. No.5193 of 2017 furnishes the bank guarantee. It is made clear that such payment will have to be made within a period of two weeks from the date of furnishing bank guarantee. It is made clear that if no such compliance is reported, A.No.3144 of 2017 will stand dismissed automatically, in which case, the applicant in A.No.5193 of 2017 is at liberty to proceed with the execution petition. Accordingly, both the applications stand disposed of.

5.As agreed by the learned counsel for both sides, post the main original petition for final hearing on 18.04.2018.

Sd/-M.M.S.J

09.03.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 11/07/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.