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

+ **O.M.P. (T) (COMM.) 18/2017**

RANU ENTERPRISES & ANR.

..... Petitioners

Through: Mr. Gulshan Chawla, Adv

versus

MALANPUR CAPTIVE POWER LTD.

..... Respondent

Through: Ms. Usha Srivastava, Adv

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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23.01.2019

I.A. No. 923/2019 (direction to Ld. Arbitrator not to proceed with proceedings)

1. This is an application moved by the respondent.
2. The substantive prayers made in the application are as follows:-
 - “a) Direct the Ld. Arbitrator, not to proceed with the arbitration proceedings till this application is decided/disposed of by this Hon'ble Court; and*
 - b) Direct the Ld. Arbitrator not take on record the Statement of Claim filed by the Petitioner/Claimant on 09.10.2018;”*
3. This application has its genesis in the order dated 26.09.2018 passed by this Court in OMP (T) (COMM) 18/2017
4. By this order, I had passed the following operative directions:-

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“46. Therefore, having regard to the foregoing discussion, I am inclined to set aside the order and remit the matter to the learned Arbitrator with a request to take up the proceedings, once again, for adjudication, subject to payment of costs of Rs.30,000/- to the respondent. The costs will be paid within two weeks from today.

47. Since the statement of claim has already been placed on record with the learned Arbitrator which is defective, the petitioners are given liberty to file a proper statement of claim with the learned Arbitrator within a period of two weeks.

48. Parties and their counsel will appear for this purpose before the learned Arbitrator on 25.10.2018 at 3.00 p.m.

49. In case, the date given by this Court is not convenient to the learned Arbitrator, he will fix another date which would be proximate to the date fixed by this Court.

50. The time for proceedings as envisaged under the 1996 Act will commence from the aforementioned date.”

5. It appears that the learned Arbitrator rescheduled the proceedings to 03.11.2018.

5.1 On that date, the learned Arbitrator noted the grievance expressed on behalf of the applicant/respondent, which is, that it had neither received a copy of the statement of claim nor the cost of Rs. 30,000/- imposed by this Court.

6. Mr. Gulshan Chawla, who, appears on advance notice on behalf of the non-applicant/petitioner has placed before me a copy of the procedural order dated 03.11.2018 passed by the learned Arbitrator.

7. A perusal of procedural order dated 03.11.2018, *inter alia*, demonstrates that the learned Arbitrator cut through the procedural maize by having a Statement of Claim furnished to him, photocopied and served on the counsel for the applicant/respondent.

7.1 Insofar as the grievance *vis-a-vis* cost was concerned, counsel for the non-applicant/petitioner appears to have indicated that compliance would be made within a period of one week from that date.

8. Qua the aspect of cost, counsel for the non-applicant/petitioner has placed before me, a copy of the covering letter dated 03.11.2018 which is suggestive of the fact that cheque in the sum of Rs. 30,000/- was sent to the address of the applicant/respondent described as: Thapar House, 124, Janpath, New Delhi-110001 (in short “Thapar House”).

8.1 I am told that a copy of the very same communication was also sent to another address of the applicant/respondent, which is: Vandana Building, 11 Tolstoy Marg, New Delhi-110001.

8.2 I am also informed by the learned counsel for the non-applicant/petitioner that the tracking report available with the non-applicant/petitioner is indicative of the fact that the enclosed cheque was delivered at the Thapar House while the communication sent to the other address was returned.

9. In other words, it is the case of the non-applicant/petitioner that the cheque in the sum of Rs. 30,000/- has neither been debited to its account nor has the same been returned to it.

10. However, to cut short the controversy, Mr. Chawla has today, handed over a fresh cheque in the sum of Rs. 30,000/- to the counsel for the applicant/respondent which bears the following details:-

“Cheque no: 068542, dated: 23.01.2019, drawn on Bank of India, Gwalior Branch, Gwalior (MP) 474001.”

11. In view of the aforesaid circumstances, I am of the view that the instant application can be closed, *albeit*, based on the undertaking given by the counsel for the non-applicant/petitioner that the cheque when presented would be honoured.

12. In case, there is any default, the learned Arbitrator will take requisite steps, hereafter, in accordance with law.

13. The Registry will dispatch a copy of the order to the learned Arbitrator.

14. *Dasti.*

RAJIV SHAKDHER, J

JANUARY 23, 2019

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