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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 129/2018**

M.Y.CONSTRUCTIONS Petitioner
Through: Mr.Davesh Bhatia, Mr.Anoop, Advs.

versus

CENTRAL PUBLIC WORK DEPARTMENT Respondent
Through: Mr.Anil Panwar, CGSC with
Mr.A.S.Panwar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **22.03.2018**

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner *inter alia* seeking the following reliefs:-

“a) Stay the operation of notice dated 20.12.2017 and any further proceedings on show cause notice dated 27.12.2017.

b) Restrain the Respondent from proceeding with re-issuing the tender for completion of remaining work to be done in accordance with agreement No.100/EE/HD/16-17;

c) Set aside the fresh tender process initiated by the Respondent for the same work, ending on 19.03.2018.

d) Restrain the Respondent from invoking the bank guarantee/s provided by the Petitioner as per terms of the agreement;

e) Restrain the Respondent from imposing any penalty for damages/compensation till the time the issue is decided by Ld. Arbitrator;

f) grant ex-parte ad interim reliefs in terms of prayers above;

g) Any other or further relief as this Hon'ble Court may deem just and proper.”

2. The respondent had awarded the work for renovation of Library and Annexe Building (Ground, First and Second Floors) at Sapru House, New Delhi (Civil/Interior Work, Electrical – Internal E.I and HVAC Work) to the petitioner.

3. For the present order, it may only be noted that the respondent, by its letter dated 1st December, 2017, extended the scheduled date of completion of work from 6th November, 2017 to 31st March, 2018, without prejudice to its right to recover compensation/damages for the delay in execution of work by the petitioner.

4. It seems that, while the scheduled date of completion of work was being extended, at the same time, a parallel proceeding in the form of a show cause notice dated 25th November, 2017 seeking to terminate the agreement had also been initiated by the respondent. This show cause notice culminated into the notice of termination dated 20th December, 2017. It is, however, noted that in this letter of termination, there is no mention of the earlier letter dated 1st December, 2017 extending the time for completion of work to 31st

March, 2018.

5. By another notice dated 27th December, 2017, the respondent called upon the petitioner to show cause why damages /compensation should not be recovered from it under the provisions of clause -2 of the agreement. This notice refers to both; the order extending the time for the completion of work, as also the termination notice.

6. The petitioner submitted a detailed representation to the respondent under cover of its letter dated 28th December, 2017. The said representation is pending consideration with the respondent, however, the respondent on 12th March, 2018 issued a fresh tender for award of the balance work.

7. I am informed that the bids have been received by the respondent, however, due to the filing of the present petition, the respondent has restrained itself from awarding work to a new contractor.

8. In my opinion, as the notice terminating the contract did not take note of the letter dated 1st December, 2017 extending the scheduled date of the completion of work and the representation dated 28th December, 2017 remains pending consideration with the respondent, the balance of equity demands that the respondent should consider the representation of the petitioner and communicate its decision to the petitioner before awarding the work to a new contractor.

9. Counsel for the respondent submits that the representation will be disposed of by the respondent within one week from today.

10. Accordingly, till the disposal of the representation and communication of the decision thereon by the respondent to the petitioner, the respondent is restrained from awarding the work to a new contractor pursuant to the tender notice issued by it on 12th March, 2018.

11. I may only hasten to add that the above order is being passed without going into the merits or demerits of the claim made by the petitioner on the reasons of delay in execution of the work and the respondent shall be free to decide the representation uninfluenced by any observation made by me in this order.

12. The petition is disposed of with the above directions, with no order as to costs.

Dasti under the signatures of the Court Master.

NAVIN CHAWLA, J

MARCH 22, 2018
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