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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 232/2018 & IA 7478/2018
RAMESTH CONSTRUCTIONS PVT. LTD. Petitioner
Through: Mr.Avinash Trivedi, Mr.Umesh
Kashyap, Advs.

versus

NIRALA PROJECTS PVT. LTD. Respondent
Through: Mr.Swetank Shantanu, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **30.07.2018**

This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner making the following prayers:-

“(a) Pass an order thereby restraining the respondent from removing or disposing of the machineries and materials (list of which is enclosed with e-mail dated 27.04.18, Annex P-10) lying at the site being Plot no.GH-03, Sector-02, Greater Noida West (UP) of Project Nirala Greenshire;

(b) Pass an order thereby directing the respondent to allow the petitioner to remove its T&P, machineries and materials (list of which is enclosed with email dated 27.04.18, Annex P-10) lying at the site being Plot no.GH-03, Sector-02, Greater Noida West (UP) of Project Nirala Greenshire or in alternative pay the amount claimed as cost of the T&P.”

Counsel for the respondent submits that the petitioner has been taking away all its machineries and materials from the site and there has been no hindrance caused by the respondent in this regard. He

further submits that the respondent has already appointed another contractor to complete the balance work and there are certain machineries and materials belonging to the new contractor lying at the site, which is disputed by the counsel for the petitioner.

Both the counsels, without prejudice to their claims and counter claims, submit that a Local Commissioner be appointed in the presence of whom the petitioner would identify machineries and materials belonging to it and that is mentioned in the list annexed at page number 26 and 27 of the petition.

In case the respondent does not dispute that the identified machineries and materials belong to the petitioner, the petitioner shall be allowed to remove the same within two days of such inspection. In case, there is a dispute on the ownership of the machineries and materials, the same would be adjudicated by the Arbitrator.

Counsels for the parties further request that as the existence of the Arbitration Agreement is not disputed, an Arbitrator may also be appointed to ensure speedy resolution of the disputes that have arisen between the parties.

In view of the submissions made by the counsels for the parties, I appoint Mr.Manikya Khanna, Advocate, A-110, Basement, Defence Colony, New Delhi, Mobile-9891054457 as the Local Commissioner to visit the site Plot no.GH-03, Sector-02, Greater Noida West (UP) of Project Nirala Greenshire with an advance notice to the counsels for both the parties.

In such visit, the petitioner, through its authorized representative, would identify the machineries and materials allegedly

belonging to the petitioner and in case the respondent admits to the same, the petitioner shall be allowed to remove the same within a period of two days from such inspection.

The fee of the Local Commissioner is fixed at Rs.75,000/- to be paid equally by the parties. The report of the Local Commissioner shall be filed in these proceedings as also to the parties.

On the request of the counsels for the parties and with the consent of the parties, I appoint Ms. Justice Manju Goel, Retired Judge of this Court, as an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Letter of Intent dated 6th December, 2013.

The arbitrator shall give her disclosure statement under Section 12 of the Act before proceeding with the reference.

Either party shall be entitled to raise all submissions and contentions before the Arbitrator so appointed, including file an application under Section 17 of the Act for seeking further interim relief.

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

Dasti.

NAVIN CHAWLA, J

JULY 30, 2018
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