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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16th August, 2018

+ **O.M.P.(I) (COMM.) 327/2018**

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD.

..... Petitioner

Through Mr.Narendera M.Sharma,
Mr.Abhishek Sharma, Ms.Prachi
Gupta and Ms.Pavitra Singh, Advs.

versus

ARMY WELFARE HOUSING ORGANISATION (AWHO) & ANR.

..... Respondents

Through Mr.A.K. Tewari and
Mr.Vikramaditya Singh, Advs. for R-
1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CAV.735/2018

As counsel for the respondent enters appearance, caveat stands discharged.

I.A.No.10913/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 327/2018

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) Appoint a Local Commissioner preferably an Architect or Civil Engineer to visit the Site at Sector-95, Village Wazirpur, Gurugram, Haryana and undertake the inspection and prepare joint inventory of (a) Complete and incomplete works by comparing with the finished schedule being part of Contract dated 13.07.2012;(b) Material brought by Petitioner and laying at Site for incorporation in the work; (c) Tool, plants other equipments belonging to the vendors of the Petitioner and laying at Site; and (d) Material laying at the office/ storage space constructed by the Petitioner at Site in the presence of Authorized Representative of Petitioner and Respondent No. 2 and Respondent No. 1 and submit the Report before this Hon'ble Court;

(b) Restrain Respondent No.1 from handing over Project Site situated at Sector-95, Wazirpur, Gurugram, Haryana till completion of the inspection and the joint inventory as mentioned in prayer (a) above and filing of the Report thereof before this Hon'ble Court.

(c) Direct the Respondent No. 1 to deposit in cash or furnish a Bank Guarantee to the tune of Rs.29,47,24,000 /- (Rupees Twenty Nine Crores Forty Seven Lacs And Twenty Four Thousand Only) in favour of the Ld. Registrar General of this Hon'ble Court subject to the final Award to be passed by the Arbitral Tribunal;

(d) Direct the respondent no.1 to handover the all records, receipts and data prepared by the petitioner, kept at the site office.

(e) After preparation of the inventories by the Local Commissioner, direct the Respondent No. 1 to handover the equipments and material belonging to the Petitioner which are lying at the Site office of the Petitioner situated at the Project Site.”

2. The petitioner had been awarded the work by the respondents for construction of Composite Housing Project for personal use of the members/allottees of the respondents on turnkey basis at Sector-95, Village Wazirpur, Gurugram.

3. Alleging delays and abandonment of the work, the respondents terminated the contract vide its notice dated 05.01.2018. By the same notice, the respondents *inter-alia* appointed a Board of Officers for preparation of an inventory of complete and incomplete items of work and material in accordance with the condition 161(a) to (e) of the General Conditions of the Contract (GCC). Paragraph 5 and 6 of the letter are reproduced herein below:

“5. You are accordingly requested to report to the Project Director, AWHO at Gurgaon in person or through an accredited representative at 1000 hrs on 16 Jan 2018 and subsequent days thereafter, when an inventory of completed and incomplete items of work and material, if any left by you at site will be made and recorded jointly as per Condition No 161 (a) to (e) on Page 57 & 58 of General Conditions of the Contract as agreed by the both parties in Article of Agreement entered into by your firm and AWHO on 31 Jul 2012 through a Board of Officers. In the event of your failure to keep this appointment, inventory will nevertheless be prepared by the Board of Officers notwithstanding your absence and the same shall be fully binding on you.

6. Your attention is drawn Condition 2 of Page No.34 of General Conditions of the Contract as agreed by the both parties in Article of Agreement entered into by our firm and AWHO on 31 Jul 2012 regarding “Property, Organisation and Possession”, solely belonging to the Employer/ Organization. In view of the above, the completed and incomplete items of work and all materials

left by you at site will be taken over by the Project Director after the inventory as stated in para 5 above is prepared. Further, after completion of inventories as aforesaid, your entry to the site of work, without due permission from the Project Director is prohibited.”

4. The respondents further on 05.01.2018 encashed the bank guarantees submitted by the petitioner.
5. By a separate letter dated 05.01.2018, the Board of Officers was constituted with the mandate to complete making of the inventory by 16.02.2018.
6. The petitioner has filed the present petition alleging that the Board of Officers took unilateral proceedings and did not make the inventory by joint physical examination of the site and even denied access to the petitioner to the site. Relying upon the condition 161 of the GCC as also the judgment of this Court in ***Prima Developers v. Lords Co-op. Group Housing Society Ltd.***, (2009) 110 DRJ 293 (DB), it is submitted by the counsel for the petitioner that making of an inventory upon termination of the contract is not only the contractual stipulation but also desirable and the same having not been done jointly, the present petition has been filed.
8. On the other hand, the learned counsel for the respondents, who appeared on advance notice, has produced before the Court the report submitted by the Board of Officers with respect to the measurement of the complete and incomplete work and materials, as also of the material allegedly taken away by the petitioner from the site. A perusal of the said compilation shows that in various meetings of the Board, the petitioner was being represented by one Mr.Ashok Sharma, its Assistant General Manager.

The Board held its meetings on a number of dates starting from 16.01.2018 to 07.03.2018. The Board of Officers submitted its report to the respondents on 22.03.2018.

9. Learned counsel for the respondents submits that a copy of this report was sought to be served on the petitioner by hand, however, receipt of the same was refused by the petitioner, whereafter the same was sent by the respondents to the petitioner through speed post on 31.03.2018. I may only note that the learned counsel for the petitioner has submitted that the copy was not taken by the petitioner as it was illegible.

10. Learned counsel for the respondents has further submitted that thereafter, the respondents floated a public tender for carrying out the balance work on 26.01.2018 and finally the work was awarded to another contractor on 10.08.2018. He submits that the petitioner has filed this petition at the belated stage only to stall the work and cause further damages to the respondents and allottee members.

11. I have considered the submissions made by the learned counsels for the parties. Section 9 of the Act is to provide an immediate interim measure of protection to a party to the arbitration agreement. In the present case, the contract had been terminated by the respondents on 05.01.2018 and even the bank guarantees of the petitioner had been encashed on the same date. By a separate communication, the respondents had appointed a Board of Officers to make the inventory in terms of Clause 161 of the GCC. It appears that the petitioner duly participated in the proceedings without any protest. The only alleged letters of protest on which reliance has been placed by the counsel for the petitioner are dated 20.02.2018 to 14.05.2018. There is no explanation given by the petitioner as to why it did not approach this Court

at any time earlier than 07.08.2018, when the present petition was filed. Clearly, the petitioner was waiting on the sideline and woke up only because the respondents have awarded the work to another contractor. As stated by the learned counsel for the respondents, the work has recommenced. Acceding to the prayer of the petitioner at this stage will stop the work from being carried out by the new contractor appointed by the respondents and cause irreparable damage to the respondents. The earlier exercise carried out by the Board of Officers would also be rendered futile. *Prima facie* it is evident that the petitioner had participated in this exercise and finding the report to be not to its satisfaction, first kept quiet and only on award of work to another contractor, has filed the present petition.

12. In view of the above, I find no merit in the present petition and the same is accordingly dismissed, leaving it open to the parties to agitate their claims and counter claims before the Arbitral Tribunal. Any observation made herein would not influence the Arbitral Tribunal while adjudicating the disputes between the parties on its own merits. There shall be no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 16, 2018/Arya