

\$~26

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

+ **FAO(OS) (COMM) 188/2018 & CM No.33940/2018**

INDIAN OIL CORPORATION LTD. Appellant
Through Mr. V.N. Koura, Mr. Sirish Kumar
and Mr. Anupam Roy, Advocates.

Versus
MAN INDUSTRIES (INDIA) LTD. Respondent
Through Mr. Sandeep Sethi, Sr. Advocate with
Mr. Gandhar Raikal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER
% **23.08.2018**
Caveat No.756/2018

Since, the respondent has put in appearance, notice of caveator stands discharged.

C.M. No.33940/2018

Allowed, subject to all just exceptions. Application is disposed of.

FAO(OS) (COMM) 188/2018

This appeal has been listed pursuant to the urgent mentioning before Hon'ble the Chief Justice and the directions given for listing.

2. The impugned order passed by the learned Single Judge dated 14th

August, 2018 in OMP(I)(Comm.) No.325/2018 under Section 9 of the Arbitration & Conciliation Act [‘A&C’ Act for short] directs that the appellant would permit the respondent, M/s. Man Industries India Ltd., to submit their bid for the subject tender bearing No.PLM/ETBPNMTPL/18/16. It was however, made clear that the said tender bid would be subject to the final outcome of the petition.

3. The respondent, who had filed the aforestated application under Section 9 of the A&C Act vide impugned order dated 18th October, 2017 has been put on “holiday list” for a period of one year. Putting on the “holiday list” means that the respondent had been black-listed for a period of one year.

4. The respondent has challenged the said order on various grounds including the submission that the supplies in the earlier contract for pipeline for Debottlenecking of Salya –Mathura Pipeline were made by 5th May, 2014, the defect liability period had come to an end in October, 2015 and till then no complaints were received. Performance guarantee furnished by the respondent were also returned on 20th February, 2016. Hence, the claim and allegation subsequently made regarding the defective supply, was incorrect and wrong.

5. Learned Single Judge has clearly exercised his discretion within the judicial parameters while issuing notice on the application under Section 9 of the A&C Act. It is obvious that there was urgency in the matter as last date for submission of the bid was 16th August, 2018. It is stated before us that the said date has been extended till 24th August, 2018.

6. The main grievance made by the appellant is that the application has been renotified for hearing on 10th January, 2019. It is submitted that in case the bid given by the respondent is accepted technically, it may create difficulty and problem if the financial bid given by the respondent is found to be lowest one. It is also stated that the Single Judge has failed to take into consideration judgment of the Supreme Court in ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others***, (2014) 14 SCC 731. Application under Section 9 of the A&C Act against black-listing was not maintainable and no interim relief could have been granted.

7. Learned senior advocate for the respondent submits that the judgment in ***Kulja Industries Limited (Supra)*** did not examine and decide the issue whether an application under Section 9 of the A&C Act against black-listing would be maintainable. Black-listing order, it is submitted, was passed on

account of alleged defective and sub-standard material supplied. Learned counsel does not oppose the prayer for expeditious disposal and decision.

8. Keeping in view the aforesaid position, we do not find any good reason or ground to interfere with the discretion exercised by the Learned Single Judge in permitting the respondent to submit their bid, otherwise the challenge and prayer made would have become infructuous. However, in case the respondent is found to be technically qualified, it will be open to the appellant to make an application for early hearing, pointing out the difficulties and problems they would face in case the financial bid given by the respondent is found to be lowest one, as award of the said tender to the respondent would virtually mean that the claim and prayer of the respondent against the black-listing order has been accepted. On such a request being made, the learned Single Judge would consider the prayer made in accordance with law. We clarify that we have not passed any specific order or direction. The appellant would also be entitled to rely upon the judgment in *Kulja Industries Limited (Supra)* and it will be open to the respondent to contest the said submission.

9. We also hope and trust that the appellant would file their reply to the application under Section 9 of the A&C Act within three weeks. Rejoinder

will be filed by the respondent within two weeks thereafter.

10. Lastly, we would observe that the order granting interim relief is not a final order disposing of and deciding the application under Section 9 of the A&C Act. On this, there cannot be any doubt. The application would be decided on merits, after reply and rejoinder etc. are filed.

11. Recording the aforesaid, the appeal is disposed of. We also give liberty to the parties to move application in this appeal in case of difficulty.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 23, 2018
ssn/MR