

\$~24

+ O.M.P.(I) (COMM.) 350/2018

B.L. KASHYAP ,& SONS LTD.

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. S.K. Maniktala, Mr. Darpan
Sachdeva and Mr. Udit Maniktala,
Advs

versus

EMAAR MGF LAND LIMITED

..... Respondent

Through: Mr. Arvind K. Nigam with Ms.
Manmeet Arora, Mr. Keshav Sehgal,
Mr. Mikhil Sharda, Mr. Mehtaab
Singh Sandher and Ms. Samapita
Biswal, Advs

\$~25

+ O.M.P.(I) (COMM.) 351/2018

B.L. KASHYAP ,& SONS LTD.

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. S.K. Maniktala, Mr. Darpan
Sachdeva and Mr. Udit Maniktala,
Advs

versus

EMAAR MGF LAND LIMITED

..... Respondent

Through: Mr. Arvind K. Nigam with Ms.
Manmeet Arora, Mr. Keshav Sehgal,
Mr. Mikhil Sharda, Mr. Mehtaab
Singh Sandher and Ms. Samapita
Biswal, Advs

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% 06.09.2018

1. Learned counsel for the parties have returned with instructions and therefore, the captioned petitions are being disposed of based on the following agreed directions:-

(i) Hon'ble Mr. Justice A.P. Shah, former Chief Justice of Madras High Court and Delhi High Court is appointed as the Arbitrator in the matter.

(ii) RITES Limited having its office at Rites Bhawan, 1, Sector 29, Gurgaon-122001 via its Chairman and Managing Director will constitute and depute a team for carrying out the mandate of this Court by visiting the subject site and discharging its function in accordance with what is stated hereafter. The team so constituted will, hereon, be referred as the Local Commissioner(s).

(iii) The Local Commissioner(s) shall measure the work already carried out by the respondent, the work in progress, and the unexecuted (balance) work at the subject site, having regard to the scope of the contract in issue.

(iv) The Local Commissioner(s) shall prepare an inventory of the building and construction materials which will include mechanical, electrical and plumbing materials available on the project site and in the stores, the plant & machineries, tools and equipments lying at the project site.

(v) The measurements and the inventorying exercise concerning materials, plant & machineries as referred in para 1(iv) above will be carried out in the presence of the Authorised Representatives (ARs) of the parties herein.

(vi) At the end of each day, the Local Commissioner(s) shall have the ARs of the parties sign the record generated by them. Copies of the same will be furnished to the ARs.

(vii) In case, the ARs of the parties have any objection with regard to any aspect of the matter, the same will be noted in the documents generated by the Local Commissioner(s).

(viii) The Local Commissioner(s) will endeavour to execute the commission as soon as possible, though, not later than four(4) weeks from the date of receipt of the certified copy of this order.

(ix) The petitioner will permit the respondent to remove its entire office record, office equipments, furniture, computers and other assets lying at the site office save and except plant, equipments and tools, including the warranty and guarantee documents and materials. The excluded plant, equipments and tools, including the warranty and guarantee documents and materials shall be removed by the respondent only upon an order being passed in that behalf by the learned Arbitrator. The respondent will have leave, though, to move an appropriate application before the learned Arbitrator in this regard.

(x) The petitioner will be at liberty to proceed with the process of appointing another person or entity to carry out the work which was upto now being carried out by the Respondent. However, the

new person/entity shall not take over the site without the permission of the learned Arbitrator.

(xi) The Local Commissioner(s) will submit a report to the learned Arbitrator; a copy of which will be furnished to ARs of the parties.

(xii) The fees payable to the Local Commissioner(s) will be firmed up by parties in consultation with CMD, RITES or his nominee.

(xiii) The fees of the Local Commissioner(s), so fixed, for the moment, shall be borne equally by the parties. The Parties will be at liberty to lodge a claim in that behalf before the learned Arbitrator.

(xiv) Parties will move the concerned Court for withdrawal or as required, quashing of respective criminal complaints.

(xv) The Arbitration proceedings will be conducted in accordance with the fees and the rules prescribed by the Delhi International Arbitration Centre.

2. I may also indicate that Mr. Sethi on instructions of S.K. Maniktala has indicated that the respondent's employees/agents are no longer present at the subject site.

3. It is Mr. Sethi's contention that the respondent's employees/agents will enter the subject site only to carry out the mandate of this order. The statement made by Mr. Sethi in this behalf is taken on record.

4. *Dasti.*

RAJIV SHAKDHER, J

SEPTEMBER 06, 2018

c