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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1413/2016, IA No.12760/2016 (u/O XXXIX R-1&2
CPC) & IA No.12762/2016 (u/S 477 & 478 of DMC Act).

ASHIMA INFRASTRUCTURES PRIVATE LIMITED Plaintiff

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Rajesh Gupta, Mr. Harpreet Singh
and Mr. Pranvir Sethi, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION

AND ANR

..... Defendants

Through: Ms. Mini Pushkarna, Standing
Counsel for NrDMC with Ms. Rekha
Goswami, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.04.2018**

1. This order is in continuation of the earlier order dated 12th March, 2018.
2. The counsel for the defendant no.1 North Delhi Municipal Corporation (NrDMC) states that she has instructions from the Additional Commissioner (Revenue) of the defendant NrDMC to consent to arbitration.
3. The senior counsel for the plaintiff, under instructions and the counsel for the defendant NrDMC state that the parties, within one month of today, shall execute in writing the document to qualify as an Arbitration Agreement for reference of the dispute to arbitration.
4. The counsel for the defendant NrDMC however states that though the present suit was with respect to three No Objection Certificates (NOCs) namely (i) NOC No.4782 dated 16th January, 2014; (ii) NOC No.1613 dated 27th November, 2014; and, (iii) NOC No.962 dated 30th October, 2012, but

the interim injunction in the suit was only with respect to the latter two NOCs and there was no interim order with respect to NOC No.4782 dated 16th January, 2014. It is further stated that the defendant NrDMC has made claims against the plaintiff with respect to NOC No.4782 dated 16th January, 2014 as well and the arbitration be directed to be qua dues under all the three NOCs aforesaid and whereupon nothing will survive in this suit.

5. The senior counsel for the plaintiff though agrees to arbitration qua dues of all the three NOCs, controverts that there is no interim order qua NOC No.4782 dated 16th January, 2014.

6. The counsels, under instructions, further states that the arbitration be of Delhi High Court Arbitration Centre and of a retired Judge of this Court. They have left it to this Court to nominate the Arbitrator.

7. The senior counsel for the plaintiff also controverts that there are any dues with respect to NOC No.4782 dated 16th January, 2014 and draws attention to some documents in the file in this context.

8. However, in this suit the said question is not relevant and if the defendant NrDMC, in the arbitration, makes any claim with respect to NOC No.4782 dated 16th January, 2014 also, it will be open to the plaintiff to rebut the said claim relying on the documents to which attention is drawn today as well as on other grounds.

9. The senior counsel for the plaintiff also states that it is the case of the plaintiff that the defendant NrDMC has overcharged the plaintiff and the plaintiff is entitled to refund and the plaintiff would file the claim and the defendant NrDMC can make a counterclaim.

10. Since this Court is to balance equities arising from the interim order
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granted in the suit, I have enquired from the senior counsel for the plaintiff, whether the plaintiff company has any assets from which arbitral award amount, if any found due against it, can be recovered; else the names of the shareholders and directors of the plaintiff have been enquired who would be personally responsible for the said dues, if any.

11. The senior counsel for the plaintiff, on instructions, assures that the plaintiff is possessed of several properties and the monies, if any found due, would be recovered.

12. The plaintiff is ordered to be bound by the aforesaid statement and it is ordered that if the monies if any found due are unrecoverable, the directors and the shareholders of the plaintiff as of today would be personally liable therefor jointly and severally with the plaintiff.

13. The suit is accordingly disposed of in terms of above by referring the parties to arbitration of Chief Justice (Retd.) Manmohan Sarin under the aegis of the Delhi High Court Arbitration Centre.

14. The parties to appear before the Co-ordinator of the Delhi High Court Arbitration Centre on 28th May, 2018.

15. Copy of this order be forwarded to Delhi High Court Arbitration Centre.

16. It is clarified that the stay if any with respect to NOC No.4782 dated 16th January, 2014 shall continue till 31st July, 2018 and whereafter the parties shall be entitled to apply before the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996.

Dasti.

RAJIV SAHAI ENDLAW, J.

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