

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1859 OF 2019
IN
COMM.ARBITRATION PETITION NO. 537 OF 2017

State of Maharashtra

**..... Applicants/
Petitioners**

VERSUS

Kalyan Sangam Infratech Ltd.

..... Respondent

Mr.Sanjay Kadam, a/w. Ms.Apeksha Sharma, Mr.Sanjeel Kadam, Ms.Sayalee Rajpurkar, i/b. M/s.Kadam and Company for the Applicants/Petitioners.

Mr.Rahul Narichania, Senior Advocate, a/w. Mr.S.R.Shukla, Ms.Pushpa Tiwari, Mr.Siddharth Chabria, i/b. M/s.SRS Legal for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 5th AUGUST, 2019

P.C.

Mr.Narichania, learned senior counsel for the respondent no.1 states that the notice of motion was served upon the learned advocate representing the 1st respondent only on 3rd August,2019 and thus could not file any affidavit in reply to oppose this notice of motion and seeks permission to proceed on the basis of the denial. Statement is accepted. The respondent no.1 is permitted to proceed on the basis of the denial.

2. By this notice of motion, the applicants seeks further extension of time upto 31st August,2019 to comply with the order dated 4th June,2019 passed by this court in Notice of Motion No.215 of 2018

insofar as deposit of 50% of the awarded sum is concerned till 31st August, 2019. The applicants also have prayed for extension of time till 31st August, 2019 to comply with the common order dated 18th June, 2019 passed in Notice of Motion No.717 of 2017 and in Notice of Motion (L) No.2796 of 2018 i.e. to take possession of the project assets from the respondent.

3. Insofar as the extension of time to deposit 50% of the amount is concerned, Mr.Kadam, learned counsel appearing for the applicants submits that the amount could not be deposited within the time prescribed by this court in view of the fact that the adequate funds were not available in the budget provided for the applicants as a result thereof the proposals had been submitted to the Finance Department and Planning Department for making such fund available which would require some more time for disbursement of the said funds.

4. It is submitted by the learned counsel that the State Government has already made provision of about Rs.100 crores which would be deposited by the applicants on or before 13th August, 2019 and the balance amount would be deposited on or before 30th August, 2019. Statement made by the learned counsel on instructions is accepted as and by way of undertaking to this court. It is made clear that no further extension of time would be granted.

5. Insofar as the prayer seeking extension of time to take possession of the project assets of the respondent in terms of prayer clause (b) of the notice of motion is concerned, it is submitted by the learned counsel that the last attempt is being made by the applicants for inviting the bids in question which would be opened on 9th August,

2019 and the technical bids would be opened on 13th August, 2019. It is submitted by the learned counsel on instruction that even if the applicants do not get the highest bid as per the expectation of the applicants, the applicants will have to accept the said bid and will have to award the contract for the work in question. It is submitted by the learned counsel that the time to take possession of the project assets from the respondent thus be extended for a reasonable period.

6. Mr. Narichania, learned senior counsel for the respondent no.1 on the other hand strongly opposes both these reliefs sought by the applicants on the ground that the arbitral award was rendered as far back as on 10th October, 2017 and thus the applicants ought to have made sufficient provision for deposit of the amount in view of section 36 of the Arbitration and Conciliation Act, 1996. He submits that the applicants cannot be shown any further indulgence by this court.

7. Insofar as prayer clause (b) is concerned, it is submitted by the learned senior counsel that by an order dated 18th June, 2019 in Notice of Motion No.717 of 2017 with Notice of Motion (L) No.2796 of 2018, this court had specifically recorded the statement made by the learned counsel for the applicants that as per the Government resolution, the Government will have to recall the bid and sought time upto 17th July, 2019 and based on such specific time suggested by the learned counsel for the applicants for taking possession of the project assets from the respondent, this court had shown indulgence to the applicants and had granted time to recover the possession till 25th July, 2019 making it clear that no further extension of time would be granted. In the event of the applicants' failure of taking possession on or before 25th July, 2019, the respondent was directed to handover

possession of the project assets to the Court Receiver, High Court, Bombay at the risks and costs of the applicants.

8. Mr.Kadam, learned counsel for the applicants in rejoinder on instruction states that whatever may be the circumstances, the applicants will not seek any further extension of time either in terms of prayer clause (a) or prayer clause (b). The statement made by the learned counsel is accepted.

9. I, therefore, pass the following order :-

(a) The applicants is directed to deposit Rs.100 crores on or before 13th August,2019 and shall deposit the balance amount as directed to be deposited by the earlier order passed by this court on or before 31st August,2019.

(b) It is made clear that the deposit would include the interest upto the date of deposit. No further extension of time would be granted.

(c) It is made clear that even if the applicants commit any default in depositing Rs.100 crores on or before 30th August,2019, interim stay granted by this court to stand vacated without further reference to court.

(d) Insofar as prayer clause (b) is concerned, the time to take possession of the project assets from the

respondent is extended till 26th August,2019.

(e) It is made clear that if the possession of the project assets is not taken by the applicants from the respondent on or before 26th August,2019, the Court Receiver, High Court, Bombay to take physical possession of the project assets from the respondent.

(f) It is made clear that the respondent is not required to carry out any further repair work during this extended period.

(g) The Court Receiver as well as the parties to act on the authenticated copy of this order.

(h) Notice of motion is disposed of on the aforesaid terms. No order as to costs.

(i) The time granted by this court in paragraph (9) of the order dated 18th June, 2019 to exchange the statement of accounts under the contract by the parties is extended by four weeks from today.

[R.D.DHANUKA, J.]