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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION NO.717 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO.537 OF 2017
WITH
NOTICE OF MOTION (LODGING) NO.2796 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.537 OF 2017

State of Maharashtra ...Applicant

IN THE MATTER BETWEEN :

State of Maharashtra ...Petitioner

V/s.

Kalyan Sangam Infratech Ltd. ...Respondent

Mr.Sanjay Kadam with Ms.Apeksha Sharma, Mr.Sanjeel Kadam and Ms.Saylee Rajpurkar I/b M/s.Kadam & Co. for the Petitioner / Applicant in both the Notices of Motion.

Mr.Rahul Narichania, Senior Counsel with Mr.S.R. Shukla, Ms.Pushpa Tiwari and Mr.Siddharth Chhabria I/b M/s.SRS Legal for the Respondent in both the Notices of Motion.

CORAM : R.D. DHANUKA, J.

DATE : 18TH JUNE, 2019.

P.C. :-

1. The Notice of Motion No.717 of 2017 is filed by the applicant (original petitioner) *inter-alia* praying for stay of the operation of the impugned award dated 10th October, 2017. The Notice of Motion (Lodging) No.2796 of 2018 is filed by the applicant

inter-alia praying for an order and direction that the respondent to carry out the repairs for the maintenance of the Project Road and for order and direction to computerize the toll collection process.

2. Heard the learned counsel for the parties. Insofar as prayer (b) of the Notice of Motion No.717 of 2017 is concerned, pursuant to the liberty granted by this Court, the applicant has filed an affidavit dated 17th June, 2019. In the said affidavit, it is stated that the applicant has opened the bids on 15th June, 2019 but only single bidder is qualified. As per the Government Rules, the applicant will have to recall the bid and time up to 17th July, 2019 will be needed for the procedural formalities and issuance of work order to the successful bidder. In the said affidavit, the applicant has also stated that before handing over the project assets to the applicant, the respondent will have to carry out repairs to the Project Road and seeks an order and direction against the respondents to carry out such repairs before handing over the project assets to the applicant and in case the respondent fails to do so, then they should be made liable to pay the costs of repairs.

3. Mr.Kadam, learned counsel appearing for the applicant states that the applicant be granted time to take possession till 25th July, 2019 without prejudice to the rights and contentions of the applicant raised in the pending Commercial Arbitration Petition

No.527 of 2017.

4. Insofar as the prayer for an order and direction against the respondent to carry out repairs to the Project Road is concerned, Mr.Narichania, learned senior counsel for the respondent tendered a copy of the letter dated 6th June, 2019 addressed to the Executive Engineer of the applicant alleging that his client has already carried out repairs to the Project Road and has incurred a sum of Rs.3,22,14,000/-. Mr.Kadam, learned counsel for the applicant on instructions disputes the factum of the repairs as well as the amount mentioned in the said letter by the respondent as per letter dated 6th June, 2019.

5. In view of the statement made in the affidavit 17th June, 2019, without prejudice to the rights and contentions of both the parties, the respondent shall hand over possession of the Project Road as directed in clause 4 of the impugned award dated 10th October, 2017 to the applicant. The parties are at liberty to record the process of handing over possession by Videography.

6. It is made clear that no further extension of time would be granted to the applicant to take possession of the Project Road from the respondent in view of the specific time suggested by Mr.Kadam, learned counsel for the applicant for taking possession of the Project Road from the respondent without prejudice to the rights and

contentions of both the parties. This Court has accepted the request of the learned counsel for the applicant and has granted time to recover the possession till 25th July, 2019. If the possession is not taken by the applicant on 25th July, 2019, the respondent would be at liberty to hand over possession of the Project assets to the Court Receiver, High Court, Bombay at the risks and costs of the applicant.

7. If according to the applicant the respondent has not carried out the repairs and if according to the respondent the applicant has not obtained possession of the Project Road or if any further breaches are committed by the parties, both the parties would be at liberty to file the claim against each other in accordance with law.

8. Both the Notices of Motion are disposed of on aforesaid terms. There shall be no order as to costs.

9. Both the parties are directed to exchange their statement of account under the contract which was the subject matter of the arbitral proceedings within 30 days from the date of the respondent handing over to the petitioner. Both the parties are directed to reconcile the statement of account within two months thereafter without prejudice to the rights and contentions of both the parties.

(R.D. DHANUKA, J.)