

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 01ST DAY OF APRIL 2019

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

A.No. 1415 of 2019

in

O.A. No. 733 of 2018

In the matter of arbitration
and Conciliation act, 1956

and

In the matter of Arbitration
Agreement dated 16.09.2009
between M/s. Subaya
Constructions Company Limited
and
Chennai Metropolitan Water
Supply and Sewerage Board

M/s. Subaya Constructions Company Limited
Rep.by its Director S.Meenakshi
Having office at New No.21
Soundarapandian Street, Ashok Nagar,
Chennai 600 083.

: Applicant/Applicant

-vs-

1. Chennai Metropolitan Water Supply and Sewerage Board
Rep.by its Managing Director
Chennai 600 002.

2. The Superintending Engineer (Construction Sewerage - V)
Chennai Metropolitan Water Supply and Sewerage Board
No.1, Pumping Station Road, Chintadripet,
Chennai 600 0082. : Respondents/Respondents

Application praying that this Hon'ble Court be pleased
to grant an order of directing the respondents to pay the
deducted fine amount of Rs.10 lakhs, balance withheld
retention money of 2.5% amounting to Rs.58.00 lakhs,
eligible accepted Bills of Rs.30 lakhs, release the
performance bank guarantee which is being extended by the
applicant till date, to the applicant without any
deduction, with regard to the project for providing

sewerage facilities in the Madhuravoyal Municipality vide Agreement/Proceedings No: CNT/SEW/MCB/JNNRUM073/2008-09 Dated 16.09.2009 pending disposal of the above OA No.733 of 2018 / arbitration Proceedings between the Applicant and the respondent.

This Application coming this day before this court for hearing, the court made the following order:-

The prayer sought for herein is to grant an order directing the respondents to pay the deducted fine amount of Rs.10,00,000 (Rupees Ten Lakhs Only), balance withheld retention money of 2.5% amounting to Rs.58,00,000/- (Rupees Fifty Eight Lakhs Only), eligible accepted Bills of Rs.30,00,000 (Rupees Thirty Lakhs Only), release the Performance Bank guarantee which is being extended by the applicant till date, to the applicant without any deduction, with regard to the project for providing sewerage facilities in the Madhuravoyal Municipality vide Agreement / Proceedings No:CNT/SEW/MCB/JNNRUM073/2008-09 dated 16.09.2009, pending disposal of the above OA.No.733 of 2018 / arbitration proceedings between the applicant and the respondents.

2. Heard Mr.A.Arumugam, learned counsel appearing for the applicant and Mr.G.Janakiraman, learned counsel appearing for the respondents.

3. The dispute between the parties is for getting

the payment in three heads. One is liquidated damages to the extent of Rs.10,00,000/- (Rupees Ten Lakhs Only) (2) withholding of the retention money at the rate of 2.5% of the total work done and the third one is the amount equal to the actual eligible amount payable to the respondents.

4. Insofar one of the heads i.e., the retention money is concerned, it is the submission of the learned counsel appearing for the applicant that, the retention money out of the total 5%, 2.5% has already been released and the remaining 2.5% should be released by the respondents, within a period of two years, from the date of completion of the work, which, according to the applicant, has been completed in the year 2015.

5. However, the learned Standing counsel for the respondents dispute the same and he would submit that, the work was completed, according to them, only on 21.01.2018, therefore, the two years period is yet to be over.

6. Like that insofar as the liquidated damages is concerned, it is the claim of the respondents that, they are going to claim Rs.70 Lakhs as liquidated damages. The claim now made by the applicant to the extent of Rs.63.88 Lakhs with interest as retention money therefore may not be granted unless and until liquidated damages is decided and quantified by the Arbitrator for which, the matter has

already been referred to the Arbitrator.

7. I have considered the said submission made by the learned counsel for the applicant as well as for the respondents.

8. Out of the three heads, where from, according to the applicant money have to come from the respondents, in respect of liquidated damages as well as retention money is concerned, that can be decided only by the Arbitrator as there are disputes of facts under the said heads between the parties. Therefore, this Court cannot make any orders by way of interim measure under Section (9) 1 of the Arbitration Act and Conciliation Act. Insofar as the money payable by the respondents to the applicant in respect of the work done i.e., last bill or remaining bill amount is concerned, it is the admitted fact that a sum of Rs.26,00,000/- (Rupees Twenty Six Lakhs Only) has to be paid by the respondents to the applicant towards bill amount and atleast in this regard, there is no dispute, hence the said amount has to be paid by the respondents to the applicant.

9. In view of the said position, this Court is inclined to pass the following order:

"That the respondents shall make the payment of Rs.26,00,000/- (Rupees Twenty Six Lakhs) to the applicant, within a period of two weeks, from the date of receipt of copy of this order failing which, it will carry the interest at the rate of 18% per annum."

With these directions this application is disposed of.

Sd./-R.S.K.J
01/04/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 12/04/2019

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