

Application No.2999 of 2019
in O.A.No.322 of 2019

R.SURESH KUMAR, J.

Heard learned representing counsel for the applicant / respondents in the main application as well as the learned counsel for the respondent / applicant in the main application. This Court passed the following order on 29.03.2019 in the main application.

"That the Bank Guarantees given by the applicant to the respondents 1 and 2 which expires on 04.04.2019 and 25.04.2019, as has been indicated in the letter, dated 07.03.2019 of the respondents 1 and 2, shall not be invoked and shall not be encashed by the respondents 1 and 2 or their Banks till 12.04.2019."

2. Learned counsel for the respondent herein submits that contract is having two parts, first part is execution and second part is Operation and Maintenance. Insofar as the execution part is concerned, the work has been completed and a provisional taking over certificate has been given, however, that does not mean that the final taking over certificate has been given and there is no relationship between the applicant and the respondent.

3. Learned counsel for the respondent herein further submits that insofar as the operation and maintenance is concerned, the first part of the contract ie., the execution has already been over and the maintenance work is going on and

whenever there is difficulty, that would be pointed out by the respondent and the applicant / contractor has to rectify the same only during this period of operation and maintenance, which is the second part of the contract. Therefore, the bank guarantees already given by the applicant / contractor in this regard, which is the subject matter of this application shall be kept alive.

4. However, the learned counsel for the applicant / contractor submits that insofar as the bank guarantees are concerned, the applicant is ready to keep it alive, and let it not be invoked by the respondent, as confirmed in their communication.

5. Learned counsel for the respondent submits that insofar as the other disputes between the parties with regard to the retention of the security deposit and other money payable to the contractor, ie., the applicant in the main application, for which the bank guarantees has been given, the matter can be referred to the arbitrator, by invoking the arbitration clause in the agreement and in this regard, learned counsel for the applicant would submit that the applicant is ready and willing to either name the arbitrator, who can be approved by the respondent, or in the alternative, the respondent can nominate or suggest a sole arbitrator, who would be considered and accepted by the applicant. Otherwise, if both the parties agree, this Court can appoint a sole arbitrator, to whom the issues can be referred.

6. In respect of the appointment of the arbitrator, since the applicant suggests certain names, the names can be directly suggested to the respondent. The respondent, on receipt of such names, can choose any one of such names to be suggested by the applicant and accordingly, he / she can be appointed as sole arbitrator, before whom all issues arising out of the agreement between the parties can be referred.

7. In the meanwhile, as an interim arrangement, the applicant herein shall keep the bank guarantees in question, to be alive until the final award to be passed by the sole arbitrator, to be appointed in this regard. However, the bank guarantees so kept alive by the applicant shall not, under any circumstances, be invoked by the respondent, till the final award is passed by the arbitrator. With these directions and observations, this application is disposed of.

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24-04-2019

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