

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB. A. (COMM.) 26/2019, IA 13409/2019**

NAVRANG INFRASTRUCTURE INC Petitioner

Through: Mr.Darpan Wadhwa, Sr. Adv. with
Ms.Tania Sharma, Ms.Shankari
Mishra and Ms.Kaveri Birbal, Advs.

versus

NIRALA HOUSING PVT. LTD Respondent

Through: Mr. Sukumar Pattjoshi, Sr. Adv. with
Mr.Swetank Shantanu, Mr. Pratap
Shanker and Mr. Sanjeev Arora,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **16.10.2019'**

1. The challenge in the appeal is to an order dated 8th September, 2019 whereby the learned Arbitrator passed an order with the following directions:-

“xxx xxx xxx
18. *Having considered the matter in its entirety, the Tribunal decides the application of the Applicant/Counter-Claimant dated 01.08.2019 in the following manner:-*

(i) *The prayer of the Counter-Claimant/Applicant for a direction on the Claimant to furnish Bank Guarantee to the extent of Rs, 46 crores in order to secure its counter claim is hereby rejected.*

(ii) *So far as the prayer of the Counter Claimant/Applicant for direction to repossess its Plant & Machinery and Material lying at the site is concerned, the same is allowed without*

prejudice to the respective pleas and contentions of the parties and subject to the following conditions:-

(a) An inventory of the Plant & Machinery lying at the site shall be prepared in presence of the authorized representatives of the parties within two weeks from the date of this order and shall be placed before the Tribunal.

(b) If there is no dispute with regard to the items of such inventory and the Applicant is willing to take possession of the Plant & Machinery shown in the agreed inventory, it will furnish a Bank Guarantee in the sum of Rs. One crore in favour of the Claimant M/s. Nirala Housing Private Limited within next two weeks which shall be kept alive till the final adjudication of case no. 2.

(c) Besides furnishing the Bank Guarantee, the Applicant shall also give the undertaking to the effect that the said Machinery & Plant will not be alienated and/or put to further encumbrance, in any manner whatsoever, by creating charge or charges on the said Plant & Machinery.”

2. During the course of hearing, Mr.Darpan Wadhwa, learned Senior Counsel for the petitioner has suggested that the aforesaid order be modified as petitioner is ready and willing to furnish bank guarantees in favour of the respondent herein. The initial bank guarantee for Rs.50,00,000/- shall be furnished within a period of 45 days from today and the balance bank guarantee for Rs.50,00,000/- shall be furnished within 90 days from today which shall be subject to the respondent releasing all the plant and machinery which is in their custody as per the inventory at pages 161 and 162, after giving due consideration of the machinery already released in

favour of certain Banks pursuant to the Court orders. The aforesaid submission is agreeable to Mr.Sukumar Pattjoshi, learned Senior Counsel for the respondent.

3. If that be so, the impugned order is modified to mean that the plant and machinery shall be released within one week from the date of filing of an undertaking on the aforesaid terms by the petitioner in the Court, which shall be within one week from today. The bank guarantees shall be furnished by the petitioner in favour of the respondent, in terms of the submission made by Mr.Wadhwa, and as noted above.

4. It goes without saying that the petitioner shall keep the bank guarantees alive till the final adjudication of the Case No.2 pending before the learned Sole Arbitrator.

5. It is also made clear that the parties shall also be at liberty to file appropriate application(s) for any interim protection if so advised, after completion of pleadings. This shall also include an application by the petitioner herein on similar terms which was not considered by the learned Sole Arbitrator being premature i.e. Case No. 1.

6. The appeal is disposed of.

V. KAMESWAR RAO, J

OCTOBER 16, 2019/ bh