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

+ O.M.P.(I) (COMM.) 417/2017

SIEMENS AKTIENGESELLSCHAFT & ANR.

..... Petitioners

Through Mr. Jeevan Ballav Panda, Mr. Satish
Padhi and Ms. Meher Tandon, Advs.

versus

DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED

..... Respondent

Through Mr. Salim A. Inamdar, Mr. Hasan
Murtaza, Ms. Divya Anand and Mr.
Ravi Sehgal, Advs.

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Ravi Sehgal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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24.01.2019

1 It is not in dispute that an arbitration agreement subsists
between the parties herein. It is also not in dispute that pursuant to the
arbitration agreement, an Arbitral Tribunal was constituted, which has

concluded its proceedings and has reserved the matter for rendering an Award.

2 The captioned petitions emanate from the two sub-contracts executed between the petitioners herein and the respondent.

2.1 These Sub-Contracts, I am told, were executed in the backdrop of the respondent entering into a Concession Agreement dated 25.08.2008 with Delhi Metro Rail Corporation (in short 'DMRC').

2.2 In view of disputes erupting between the respondent and DMRC, the matter was referred to an Arbitral Tribunal, which resulted in passing of an Award dated 11.05.2017. The award entailed a receipt of a huge sum of money, running into thousands of crores in favour of the respondent.

2.3 DMRC assailed the Award by preferring a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'Act').

2.4 The Section 34 petition filed by DMRC was dismissed. Being aggrieved, DMRC preferred an appeal with the Division Bench under Section 37 of the Act. A Division Bench of this Court, vide judgment dated 15.01.2019, partly allowed the appeal. In sum, the Division Bench set aside the Award even while giving liberty to the parties to take recourse to the arbitration clause for fresh adjudication *vis-a-vis* their respective claims and counter-claims.

3. It is in these circumstances, the Award, which was passed in favour of the respondent, no longer exists and stands effaced.

4. The petitioners before me had, it appears, filed these petitions in their capacity as sub-contractors of the respondent herein in the hope that in the arbitration proceedings pending between the respondent and DMRC, certain amounts would come the respondent's way, which could, then, be utilized to secure their interest.

4.1 Besides this, these petitions, according to the learned counsel for the petitioners, are also filed keeping in view the weak financial position of the respondent.

4.2 In support of this plea, my attention has been drawn by the learned counsel for the petitioners to order dated 15.03.2018, whereby, the respondent was directed to file an affidavit disclosing the details of its assets.

4.3 As directed, an affidavit dated 31.03.2018 was filed by the respondent, which, *inter alia*, adverts to the fact that the respondent does not hold any physical assets. The affidavit, however, does advert to the fact that debts of the lenders were serviced in the past by the respondent to the extent of over Rs.1144/- crores for the period spanning between 01.07.2013 to 31.03.2018.

5. Having regard to the foregoing facts and circumstances, I am in agreement with the submission made by the learned counsel for the respondent that if the petitioners were to succeed in obtaining an Award, they could, then, at that stage, move the Court by way of an appropriate application/petition, which could include an execution petition.

6. At this juncture, in anticipation, for me, to pass interim order(s), which would result in directing the respondent to deposit liquid funds in this Court, does not appear to be either expedient or necessary.

7. Thus, for the moment, the captioned petitions are closed. The petitioners will, however, have the liberty to move the Court at the appropriate stage, if necessary, after the Award is rendered in the proceedings pending before the concerned Arbitral Tribunal.

RAJIV SHAKDHER, J

JANUARY 24, 2019/A