IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.595 OF 2020

(Govt. of India, M.O.S.R.T. & H. New Delhi representative through D.G.R.D. & Special Secretary, M.O.S.R.T. & H. New Delhi and another Vs. Abhijeet Ashoka Infrastructure Pvt. Ltd., Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. | *Court's or Judge's orders.*

Shri S.G. Loney, Advocate for Petitioner.
Shri Chetan Dhore, Advocate for Respondent.

CORAM: RAVINDRA V. GHUGE, J.
DATE: 30th JANUARY, 2020.

1] I have briefly heard the learned Advocate for the petitioner and the sole respondent. With their assistance, I have perused the petition paper-book.

2] It is not disputed that an application under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the respondent is pending. So also, the proceedings initiated by the petitioner under Section 34 along with an application for interim relief is also pending.

3] I find that if this petition is to be worked out by the parties, it would virtually amount to considering their submissions, which would be within the realm of the Section 9 application as well as the application for interim relief filed in the proceedings under Section 34.

4] The grievance of the petitioner is that the respondent is collecting toll from the public at large at the rate of almost Rs.10 lakhs per day, on an average. His claim, as per the arbitral award, would be an amount Rs.9 crores

inclusive of 20% interest per annum from the date of the award. Grievance is that the respondent, by now, has collected above Rs.30 crores, which is more than what he would be entitled to as per the arbitral award. The excess amount being collected by him, will have to be recovered and for which, the petitioner will have to pursue the respondent.

5] The learned Advocate for the respondent submits on instructions that the respondent has a reputation to defend and is a well known company. The cause of action emerging from this petition is not the only contract that the respondent has. If the respondent finds that it has collected more amount than the amount due and payable to it under the arbitral award, it would be obliged to return the excess amount to the petitioner expeditiously.

6] Considering the above, this petition is disposed off with the following directions :-

[a] The litigating parties would appear before the concerned court in the application under Section 9 on 07.02.2020.

[b] The litigating parties would advance their oral submission on the Section 9 application, as well as, the application for interim relief filed under Section 34 proceeding, on or before 15.02.2020. Written notes of submissions are permitted.

[c] The concerned court would deliver an order in the Section 9 application, as well as, the application for interim relief in the Section 34 proceeding, on or before 29.02.2020.

[d] All contentions of the litigating parties, including objections if any, are kept open.

[e] The concerned court would consider the submission of the petitioner as regards amount being collected daily and purportedly exceeding the amount, which the company would be entitled to under the arbitral award and would pass appropriate orders.

[f] Parties to note that if it is found that the respondent company has collected amount more than the amount payable under the arbitral award, the Court would consider issuing a direction for stopping the collection of toll. Until then, the company would be obliged to tender the details of the toll collection on daily basis, as is being done today.

(Ravindra V. Ghuge, J.)

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