

OMP(I)(COMM)- 413/19

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

+ **ARB. A. (COMM.) 5/2020**

PUBLIC WORKS DEPARTMENT GNCTD Petitioner

Through: Mr.Ramesh Singh, Standing Counsel
with Ms.Mrinalani Sen Gupta,
Mr.Ishan Agrawal & Ms.Bhawana
Kataria, Advs.

versus

CONTINENTAL ENGINEERING CORPORATION (CEC)

..... Respondent

Through: Mr.Arun Kumar Varma, Sr. Adv.
with Mr.Abhay Raj Varma, Mr.Vishal
Nautiyal & Mr.Shivang Bhargava,
Advs.

+ ✓ **O.M.P.(I) (COMM.) 413/2019**

CONTINENTAL ENGINEERING CORPORATION..... Petitioner

Through: Mr.Arun Kumar Varma, Sr. Adv.
with Mr.Abhay Raj Varma, Mr.Vishal
Nautiyal & Mr.Shivang Bhargava,
Advs.

versus

**THE PUBLIC WORKS DEPARTMENT, GOVERNMENT OF NCT
OF DELHI**

..... Respondent

Through: Mr.Ramesh Singh, Standing Counsel
with Ms.Mrinalani Sen Gupta,
Mr.Ishan Agrawal & Ms.Bhawana
Kataria, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

Signature Not Verified

Signing Date:19.10.2024 17:06:25
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

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ORDER

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04.03.2020

1. The present order disposes of the appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ('the Act') preferred by the Public Works Department of the GNCTD and the petition under Section 9 of the Act filed by the Continental Engineering Corporation (CEC).
2. For the sake of convenience, the parties are referred to by the nomenclature assigned to them in the appeal.
3. The appeal under Section 37(2)(b) of the Act assails the order dated 27.12.2019 passed by the learned Arbitrator in the arbitration presently pending between the parties (the impugned order). The petition under Section 9 seeks an order primarily restraining the respondent from invoking the ten bank guarantees/FDRs as set out in Document 5 annexed by the Respondent in its petition.
4. The learned Arbitrator, vide the impugned order, has allowed the respondent's application under Section 17 of the Act with the following directions:-

"V. Order under Section 17 of A & C Act. 1996 (Amended)

Arbitration Tribunal, under provision of Section 17 of A & C Act 1996 (amended) by this order, directs that the Respondent shall not make recovery or adjust amount of Rs.42.29 Cr as liquidated Damage from any amount due and payable to the Claimant under this contract or any other contract as stated in their letter dated 26th Oct. 2019 to the Claimant, till the present Arbitration proceedings is concluded and AT's award is delivered."

5. On 06.02.2020, after the matter was heard at some length, it was put to the parties as to whether they would be agreeable for

modification of the impugned order by incorporating an additional condition that till the conclusion of the arbitration, the respondent would remain restrained from recovering its outstanding dues from the appellant. The matter was subsequently adjourned to 11.02.2020 to enable the counsel to obtain instructions on this aspect.

6. On the next date, learned Senior counsel for the respondent had submitted that the respondent was agreeable to the disposal of the appeal in those terms provided the respondent's claim with respect to the unpaid dues accruing from the petitioner qua its final bill also be permitted to be raised in the ongoing arbitration proceedings itself – by dispensing with the requirement of first approaching the Superintending Engineer and Chief Engineer in terms of the agreement between the parties. Learned counsel for the appellant had thereafter prayed for time to obtain instructions on whether the appellant had any objections on this count.

7. Today, learned counsel for the appellant submits that the appellant has no objection to the aforesaid claim being raised in the ongoing arbitration or the waiver of the requirement to approach the Superintending Engineer and Chief Engineer, but the same would be subject to the respondent first approaching the Dispute Redressal Committee (DRC). Further, he submits that depending on the outcome of the proceedings before the DRC, the respondent would be free to raise its additional claim in the ongoing arbitration proceedings. The respondents have no objection to this proposition.

8. In view of the aforesaid stand taken by the parties, the appeal and the petition are accordingly disposed of by modifying the

impugned order to the extent that till conclusion of the arbitration proceedings, the respondent would be restrained from recovering its outstanding dues from the appellant, the same would however be subject to the respondent keeping its bank guarantee/FDR for the amount of Rs.24,24,24,213/- alive during the pendency of the arbitration proceedings. It further made clear that the appellant will not encash the said bank guarantee/FDR till the conclusion of the arbitration. The respondent is also granted liberty to raise its additional claim regarding the non-payment of its final bill directly before the DRC and depending upon its outcome, thereafter raise an additional claim, if necessary, in the ongoing arbitration proceedings.

9. The appeal and the petition are accordingly disposed of in the aforesaid terms. The parties will be governed by the terms of this order. No further orders are called for.


REKHA PALLI, J

MARCH 04, 2020
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