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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 41/2020

**ALPASSO INTERNATIONAL ENGINEERING
COMPANY**

..... Petitioner

Through: Mr. Adarsh Tripathi, Advocate

versus

**TRANSPORT INTERNATIONAL ENGINEERING COMPANY &
ORS**

..... Respondents

Through: Mr. Rakesh Kr. Khare, Advocate (M-
9213666304)

Mr. Anish Gupta, Advocate for R-4
(M-9560322297)

Mr. Atul Agarwal, Advocate (M-
9899711304)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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12.03.2020

CAV 206/2020

1. Caveator has appeared in this matter. Caveat is discharged.

CM APPL. 9582/2020

2. The order dated 17th January, 2020 is taken on record. Application is disposed of.

C.R.P. 41/2020 & CM APPL. 8923/2020

3. The only issue in this petition is in respect of non-payment of costs which were imposed on 27th September, 2019 for taking on record the written statement. Since the costs were not deposited/paid, the defence of the Defendant no.1 and 2 was struck off on 17th January, 2020.

4. The petition arises out of a suit for recovery of a sum of Rs.1,24,21,385/- along with interest. The suit was filed in 2016 by Respondent No. 1 herein - Transport International Engineering Company

(hereinafter 'Plaintiff') against the Petitioner and three other Defendants. Vide order dated 27th September, 2019, after having observed that the written statement has been delayed considerably, the Trial Court permitted the written statement of Defendants No.1, 2 and 4 to be taken on record subject to the following terms:

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*10. No foundation has been laid down by Defendants showing good grounds for extension of time. However, considering the overall circumstances, the court also observes that the case is at the initial stage and the delay occurred on account of the same can be taken care of by imposing penalty, I hereby allow the applications of defendant no. 1,2 and 4 subject however to the cost of **Rs. 50,000/- each** to be paid by them (out of which Rs. 20,000/- each is to be deposited by each defendant with New Delhi DLSA, PHC) within a month.*

11. Payment of costs is a condition precedent to take up on record, the Written Statement of defendants.”

5. Prior to the next date, Defendant No.1 i.e. the Petitioner deposited the amount of Rs.20,000/- with the DLSA. On the next date i.e. 17th January, 2020, the Defendant No.1 carried a cheque for Rs.30,000/-. It is submitted that since there was no clarity as to in whose favour the said sum was to be given, the cheque was to be given after seeking clarity on this aspect. However, since the costs was not paid within the period of one month, the Trial Court has refused to take the written statement on record. Ld. counsel for the Plaintiff submits that the payment of the costs was a condition precedent for the written statement to be taken on record.

6. Neither of the counsel dispute the position that the written statement has already been filed, however, with delay. Part of the costs of Rs. 50,000/-

was deposited and a cheque for the remaining costs imposed on 27th September, 2019 was carried to the Court. The Defendant ought to have been diligent and paid the same within one month. However, considering that the amount of recovery which is being sought, is substantial and the costs imposed are also steep, this Court is inclined to allow the written statement to be taken on record. The cheque of Rs.30,000/- has been handed over by the Defendant No.1 to the Plaintiff today. Insofar as the other Defendants are concerned, Defendant Nos.2 and 4 have already stated that they do not wish to file their written statements. Insofar as Defendant No.4 is concerned, the application under Order VII Rule 11 CPC is stated to have been filed, which is pending for hearing.

7. The written statement of Defendant No.1 be now taken on record and the suit be proceeded in accordance with law. It is made clear that considering that the recovery sought is for a substantial sum, the present suit shall be treated as a commercial suit under the Commercial Courts Act, 2015 and henceforth, the time period fixed in the Commercial Courts Act shall be applicable to this suit. No unwarranted adjournments shall be granted to the Defendants and the suit shall be proceeded with expeditiously by the appropriate Court, after re-numbering the same as a Commercial suit.

8. The petition and all pending applications are disposed of in the above terms. Copy of this order be sent to the District Judge, Patiala House Courts, Delhi for re-numbering of the suit and listing before the appropriate court hearing commercial disputes.

PRATHIBA M. SINGH, J

MARCH 12, 2020

Rahul /A.S.