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

+ **OMP(I) COMM 106/2020**

**ASCENT CONSTRUCTION P. LTD.** .....Petitioner  
Through: **Ms. Bharti Tyagi, Advocate.**

versus

**M/S KATTERS INDIA P. LTD. & ORS.** ..... Respondent  
Through: **Mr. Karan Nagrath, Adv. for R-1.**

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**01.05.2020**

IA 3787/2020 & IA 3788/2020 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed-off.

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1. The hearing was conducted through video conferencing.
2. The petitioner seeks restraint of encashment of nine Bank Guarantees issued in favour of respondent no. 1. The latter's learned counsel states, upon instructions, that each of the said Bank Guarantees have been encashed and the monies have been credited to their accounts, therefore, the aforesaid prayer clause has become infructuous.
3. The petitioner next contends that lest the petitioners claim be prejudiced, the work carried out by the petitioner should be measured at the site, before respondent no. 1 initiates any further work. The petitioner, a sub-contractor of respondent no.1, claims to have carried out 15% to 20% construction work at site.

4. Respondent no. 1 has been given a contract by R-2 to develop a Microsoft B-4 Campus at Hyderabad, i.e. approximately 9 lakh sq. ft. of covered area. The petitioner has been sub-contracted to carry out only a small portion of it. The *lis* is only between the petitioner and respondent no. 1. Therefore, till the measurement of the work claimed to have been carried out by the petitioner, is done by the Local Commissioner in the presence of the parties, respondent no. 1 undertakes not to disturb the *status quo* of that portion of the work. The parties expect the measurement to be carried out not later than six weeks from today, especially in view of the nationwide lockdown on account of the pandemic. With respect to other portion of the campus being developed or area contracted to R-1 by R-2, the petitioner agrees that it could have no claim on it or seek restraint on further work.

5. The *lis* between the parties is to be adjudicated by way of arbitration. At request of the learned counsel for the parties, Hon'ble Mr. Justice Badar Durrez Ahmad (Mobile No.7042205786), a former Judge of this court and former Chief Justice of High Court of Jammu and Kashmir, is appointed as the Arbitrator. The parties agree that albeit the contract fixes Bangalore as the seat of arbitration, they now agree that arbitration be held at Delhi instead of Bangalore. Therefore, the seat of the arbitration shall be Delhi. The fees of the arbitration shall be determined by the Arbitrator himself. The parties shall appear before the Arbitrator on 8<sup>th</sup> May 2020 and on such dates as may be convenient to him.

6. The parties agree and desire that a Local Commissioner (Architect/Civil Engineer), preferably located in Hyderabad, be appointed to measure the work carried out by the petitioner. The Local Commissioner

and her/his fees shall be fixed by the Arbitrator. The same shall be shared jointly by the petitioner and respondent no.1.

7. The petition is disposed-off, in terms of the above.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsels through email.

**NAJMI WAZIRI, J**

**MAY 01, 2020/kk**