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

+ **OMP (I)(COMM) 261/2020**

MS MODERN CONSTRUCTION CO (DELHI)

..... Petitioner

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Rajender Agarwal & Mr. Anoop
Kumar, Advs.

Versus

TULSIANI CONSTRUCTIONS AND DEVELOPERS PVT LTD

..... Respondent

Through: Mr. Gaurav Mitra, Adv. with Ms.
Simran Jyot Singh & Ms. Sparshi
Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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07.09.2020

This matter is being heard through Video Conferencing.

1. The present petition has been filed with the following prayers:-

“Now that the petitioner prays and claims as under:

a) This Hon'ble Court may be pleased to stay the operation of the termination notice dated 21.8.2020 and restrain the respondent from carrying out any work on the said project except through the petitioner, OR, in the alternative, pass an ex parte ad interim injunction in favour of the petitioner and against the respondent thereby restraining the respondent, their employees, agents and representatives from in any manner carrying out any construction

activity at the site of "Easy in Homes", situated at Sector 35, Sohna Road, Gurugram, Haryana, before measuring the work already done by the petitioner at site and without taking an inventory of the machinery lying at the site for which a Local Commissioner may be appointed by this Hon'ble Court to visit the site and measure the work already done by the petitioner at of "Easy in Homes", situated at Sector 35, Sohna Road, Gurugram, Haryana and till such time a report is submitted to the Court, the respondent be restrained from carrying out any construction activity at the site. The respondent may also be restrained from preventing the petitioner from removing their tools, plants and machinery from the site.

b) Any further order which this Hon'ble Court may deem fit may also be passed in favour of the petitioner."

2. Mr. Harish Malhotra, learned Sr. Counsel appearing for the petitioner, on instructions, clarifies that the petitioner shall confine the petition only to the aspect of measuring the work already executed by the petitioner at the site in question i.e. Sector-35, Sohna Road, Gurugram, Haryana.

3. On this submission of Mr. Malhotra, Mr. Mitra, learned counsel appearing for the respondent states that even though, there would be sufficient material available with the petitioner to establish the work executed by it on the basis of RA bills / challans / plans etc., still he has no objection if a Local Commissioner is appointed by this Court for measuring the work executed.

4. I have enquired from the learned counsels for the parties on the nature of construction that exists at the site in question. I have been informed by

Mr. Malhotra, a housing complex is being constructed, consisting of 5 Towers with 15 floors / 13 floors.

5. Noting the submissions made by the learned counsels and the nature of commission to be undertaken, I deem it appropriate to appoint two Local Commissioners from the panel of DIAC, whose details are as under, who shall carry out the commission of measuring the work executed by the petitioner till the date of termination of contract i.e. 21st August, 2020.

(i) Mr. J.P. Singhal, Former Chief Engineer, CPWD, Executive Director in Indian Building Congress, Mobile No. 9810200898;

(ii) Mr. K.B. Rai, Retd. Chief Engineer, Punjab PWD, Mobile No. 9810215732

6. The Local Commissioners are at liberty to engage the services of one Civil Engineer each to assist them for carrying out the commission. The Local Commissioners, at the first instance, shall decide (a) what balance work has to be executed by the new Contractor; (b) thereafter they shall measure the work executed by the petitioner till the date of termination i.e. 21st August, 2020 and (c) the Local Commissioners shall not take into consideration the work carried out w.e.f 21st August, 2020 till the first date of execution of the commission and also the ongoing work that is being carried out by the new Contractor / inhouse workers.

7. The Local Commissioners shall be paid an amount of Rs.1,50,000/- each for carrying out the commission. The Civil Engineers, to be engaged by Mr. Singhal and Mr. Rai shall be paid an amount of Rs.50,000/- each. The amount shall be shared equally by the parties herein. The parties shall be at liberty to rely upon any document(s) in support of their stand with regard to the work having been executed at the site. Any out of pocket

expenses incurred by the Commissioners like secretarial/transportation etc. shall be paid as per actuals.

8. The Local Commissioners shall execute the commission within a period of 5 days effective from 12th September, 2020. After the commission is executed, the Local Commissioners shall jointly prepare a report and give an original copy, under their signatures, to both the parties to enable them to rely upon the same in future proceedings.

9. During the course of submissions, Mr. Malhotra and Mr. Mitra have also stated that as disputes have arisen between the parties, appropriate shall be for this Court to appoint a sole Arbitrator, who shall adjudicate the disputes and differences between the parties. Accordingly, this Court appoints Justice G.S. Sistani, a Retired Judge of this Court, as the sole Arbitrator, who shall adjudicate the disputes and differences between the parties. The fee of the learned sole Arbitrator shall be regulated by Fourth Schedule to the Arbitration & Conciliation Act, 1996, to be shared equally by the parties. The parties shall be at liberty to take all pleas available to them, both on facts and in law. The parties shall also be at liberty to seek appointment with the learned sole Arbitrator after calling him on his mobile No. 9871300034.

10. Let a copy of this Order be sent to Justice G.S. Sistani (Retd.) for information.

11. Petition is disposed of.

V. KAMESWAR RAO, J

SEPTEMBER 07, 2020/ak