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

%   **Date of decision: 22nd December, 2020.**

\+   **<u>FAO(OS) (COMM) 173/2020, CM APPL. Nos. 32821/2020 (of the appellant for ad interim directions) & 32822/2020 (of the appellant for placing on record additional documents)</u>**

CITY LIFELINE TRAVELS PRIVATE LIMITED .....Appellant

Through: Mr. Maninder Singh, Sr. Adv. with Ms. Manmeet Arora, Mr. Tarang Gupta, Ms. Samapika Biswal & Mr. Harkirat Singh, Advs.

versus

DELHI JAL BOARD .....Respondent

Through: Mr. Ramesh Singh, Mr. Gautam Narayan, Ms. Asmita Singh, Mr. R. A. Iyer, Advs for R-1/DJB with Mr. Virender Kumar, Chief Engineer (DJB) and Mr. Deepak Shrivastwa, Executive Engineer (DJB).

AND

\+   **<u>FAO(OS) (COMM) 174/2020, CM APPL. Nos. 32826/2020 (of the appellant for ad interim directions) & 32827/2020 (of the appellant for placing on record additional documents)</u>**

VSK TECHNOLOGIES PRIVATE LIMITED & ORS. ….Appellants

Through: Mr. Maninder Singh, Sr. Adv. with Ms. Manmeet Arora, Mr. Tarang Gupta, Ms. Samapika Biswal & Mr. Harkirat Singh, Advs.

versus

DELHI JAL BOARD .....Respondent

Through: Mr. Arun Kathpalia, Sr. Adv. with Mr. Ramesh Singh, Mr. Gautam Narayan, Ms. Asmita Singh, Mr. R. A. Iyer, Ms. Bani Brar & Ms. Diksha Gupta, Advs. alongwith Mr. Virender Kumar Chief Engineer, DJB and Mr. Deepak Shrivastwa, Executive Engineer, DJB.

AND

\+ **FAO(OS) (COMM) 175/2020, CM APPL. Nos. 32829/2020 (of the appellant for ad interim directions) & 32830/2020 (of the appellant for placing on record additional documents)**

CITY LIFELINE TRAVELS PRIVATE LIMITED ....Appellant

Through: Mr. Maninder Singh, Sr. Adv. with Ms. Manmeet Arora, Mr. Tarang Gupta, Ms. Samapika Biswal & Mr. Harkirat Singh, Advs.

versus

DELHI JAL BOARD .....Respondent

Through: Mr. Ramesh Singh, Mr. Gautam Narayan, Ms. Asmita Singh, Mr. R. A. Iyer, Advs for R-1/DJB with Mr. Virender Kumar, Chief Engineer (DJB) and Mr. Deepak Shrivastwa, Executive Engineer (DJB)

AND

\+ **FAO(OS) (COMM) 176/2020, CM APPL. Nos. 32832/2020 (of the appellant for ad interim directions) & 32833/2020 (of the appellant for placing on record additional documents)**

VSK TECHNOLOGIES PRIVATE LIMITED & ORS.

.....Appellants

Through: Mr. Maninder Singh, Sr. Adv. with Ms. Manmeet Arora, Mr. Tarang Gupta, Ms. Samapika Biswal & Mr. Harkirat Singh, Advs.

versus

DELHI JAL BOARD .....Respondent

Through: Mr. Ramesh Singh, Mr. Gautam Narayan, Ms. Asmita Singh, Mr. R. A. Iyer, Advs for R-1/DJB with Mr. Virender Kumar, Chief Engineer (DJB) and Mr. Deepak Shrivastwa, Executive Engineer (DJB).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. These appeals have been preferred against the orders dated 2nd December, 2020 in OMPs (I) (Comm) No. 389/2020, 390/2020, 391/2020 & 392/2020 filed by the appellants, all under Section 9 of the Arbitration and Conciliation Act, 1996. Vide the impugned orders the Single Judge has issued notice of the OMPs to the respondent Delhi Jal Board (DJB) for 18th January, 2021 but not granted ad interim relief as sought by the appellants.

2. The senior counsel for the appellants in all the appeals informs that the facts in all the four appeals are identical, with the four OMPs, from orders wherein these appeals have arisen, arising out of four separate but identical contracts between the appellant in each case and the respondent DJB, with respect to different zones/territories of the city of Delhi. We will thus in this order, for convenience, refer to the facts of FAO(OS)(COMM) No.173/2020 which arises from OMP(I)(COMM) No.392/2020.

3. OMP(I)(COMM) No.392/2020 was filed *inter alia* pleading, that (i) the respondent DJB, to streamline the needs of the households in more than 1600 unauthorised colonies and several JJ clusters in Delhi, which do not have pipe water supply, for potable water, entered into contract with/placed works order on, the appellant, in the year 2012, for operating stainless steel water tankers, for a period of 10 years; (ii) the said contract was working smoothly, for seven years prior to the filing of the petition; (iii) the appellant used to raise its invoices on the respondent DJB in terms of the contract and the respondent DJB was making payment thereof; (iv) the

invoices raised by the appellant for the months of August and September, 2020 though were submitted by the appellant and verified, processed and approved for payment by the respondent DJB, but the respondent DJB, without any reason or explanation, released only part payment against the invoice for the month of August, 2020, that to, on 31st October, 2020; (v) the balance amount of invoice for the month of August, 2020 and the invoice amount for the month of September, 2020, was not paid; (vi) the invoices submitted by the appellant for the months of October and November, 2020, were not even processed; (vii) the respondent DJB thus defaulted in making payment of invoices for the months of August, September, October and November, 2020; (viii) timely payment of invoices by the respondent DJB was the essence of the contact; (ix) the appellant called upon the respondent DJB on various occasions to release the payment, but to no avail; (x) the appellant, by its letter dated 9th November, 2020, put the respondent DJB to notice that the appellant was being prevented from making payment of dues, to its staff comprising of drivers, mechanics and helpers, expenses towards fuel, maintenance, statutory dues etc., owing to non-payment of invoices by the respondent DJB and that the staff members of the appellant were threatening to go on strike if their dues were not paid immediately; (xi) the appellant paid its staff till the time it was possible for the appellant; (xii) there was/is no complaint by the respondent DJB of the performance of its obligations under the contract by the appellant; (xiii) the default by the respondent DJB in making payments was interfering with the performance by the appellant of its obligations under the contract; and, (xiv) the appellant had also learnt that the respondent DJB was examining options to prematurely and illegally terminate the contract, prior to the expiry of 10 years.

4. On the said pleas, interim measures, of directing the respondent DJB to release balance payment for the month of August, 2020 and entire payment for the months of September and October, 2020, in terms of invoices raised by the appellant, and of restraining the respondent DJB from taking any coercive steps against the appellant, were sought.

5. As aforesaid, the Single Judge, vide impugned order dated 2nd December , 2020 merely issued notice of the of the petition under Section 9 of the Arbitration Act to the respondent DJB, for 18th January, 2021.

6. The appeals came up first before us on 14th December, 2020, when the senior counsel for the appellants, senior counsel for the respondent DJB and the senior standing counsel for Government of NCT of Delhi also appearing for the respondent DJB, were heard.

7. The senior counsel for the appellants informed that since the appellants had been unable to pay their staff, the staff had stopped working and were on strike and the supply of water under the contract had come to a standstill.

8. Considering that the contracts entered into by the respondent DJB with the appellants were for supply of potable water to the residents of unauthorised and JJ colonies of the city and the element of public interest involved therein, it was on the very first day enquired from the senior counsel for the respondent DJB, how water was being supplied to the residents of the said colonies, since the supplies through the appellants was informed to have come to a standstill.

9. The senior counsel for the respondent DJB informed that the respondent DJB was making *ad hoc* arrangements for supply of water.

10. Being of the opinion that such *ad hoc* arrangements made by the respondent DJB may not be fulfilling the needs of all the residents of unauthorised colonies and JJ clusters for potable water, putting them not only to great hardship but also at great health risk in these pandemic times, from consuming non-potable water, efforts were made to find a just, amicable, acceptable solution and we must record that all counsels also reciprocated in the same spirit i.e. with the intent to, in the interregnum, ensure supply of potable water, as was being supplied till now under the contracts aforesaid, to the residents of the said colonies,.

11. In this context, several proposals were exchanged and the matters passed over from time to time to enable counsels to consider and take instructions on what had transpired in the Court.

12. We are happy to record that today, though after several passovers, possibilities of amicable settlement appear. The counsel for the appellants as well as the counsel for the respondent DJB have emailed to us their respective solutions/interim arrangement and having been unable to agree on the final shape, have graciously left it to the Court to make interim arrangement in the interest of both parties, so that supply of water can be restored.

13. The proposal forwarded by the counsel for the appellants is as under:-

> *"1. The Appellant has submitted that it would not be possible for it to continue to provide the Water Tanker*

services without payment of 85% of the invoices regularly including for the period from August to November 2020. The approved invoices [in accordance with the Water Tanker Distribution Management System – WTDMS, working on GPS]from August to November 2020 have already been submitted by the Appellant to the DJB.

2. On the other hand, on behalf of DJB, it had been submitted that it would pay 70% of the Invoices including for the period from August to November 2020 and the balance 30% will be paid on submission of security / guarantee of the promoter directors and / or by the Company.

3.The Appellant has submitted that it will arrange for a Bank Guarantee equal to 15% of the outstanding amount upto November 2020 for release of the equivalent amount alongwith 70% released by the DJB, whereupon it would pay the outstanding salaries to the employees and fuel costs etc. – and will resume the supply immediately in terms of the agreement.

4.Without prejudice to the rights and contentions of the parties before the Arbitrator, the above-mentioned agreement would continue till the matter is taken up for consideration for decision by the Ld. Arbitrator in the arbitral proceedings, as expeditiously as possible. It is clarified that out of the balance 30% of the invoice amounts, DJB shall release amount(s) equal to the amount of the security / bank guarantee furnished by Appellants to the satisfaction of the DJB.

5.Shri Deepak Bhareja, Director of VSK Technologies Pvt. Ltd. [Appellant No. 1 in Appeal bearing FAO(OS) Comm. No.174/2020 and 176/2020 for Zone I and Zone V] and Shri Gurpal Singh Dhamija, Director of City Lifeline Travels Pvt. Ltd. [Appellant in Appeal bearing FAO(OS) (Comm.) Nos. 173/2020 and 175/2020for Zone II and Zone VII] undertake that the Water Tanker Supply Services shall be resumed *upon payment of the outstanding dues upto November 2020 as per the interim arrangement above, and the services shall continue till the payment is regularly made by the DJB as per the aforesaid arrangement and the terms and conditions of the Agreement.*

6. The Arbitrator shall consider and take further decision with reference to the above-mentioned arrangement as well as on the disputes between the parties. This arrangement is without prejudice to the rights and contentions of the parties and would not be any expression on the merits of the rights and contentions of both the parties."

14. The counsel for the respondent DJB has proposed as under:-

"Disputes having risen between the parties with regard to payment terms contained in the contract, the appellant filed a petition under Section 9 seeking release of payments, on which notice was issued; however no interim orders were passed.

Against the said order the appellant filled the present appeal. During the pendency of the appeal, the appellant's water tankers stopped plying. This is causing grave hardship to the areas where the water supplies had to be carried.

In these circumstances, without prejudice to the rights and contentions of the parties, the respondent has offered that in the event of the appellant forthwith resuming services and ensuring uninterrupted water supply of water through its the tankers, and giving an undertaking to this effect to this hon'ble court, the respondent would release 70 percent of the invoices passed with a further undertaking being given by the directors of the appellant that in the event any amount is found to be due and payable in the arbitral proceeding (yet to be commenced) such amounts shall be paid forthwith to the respondent. The respondent has *further offered that it is willing to release further balance amounts against and to the extent of bank guarantees acceptable to the respondent.*

The appellant has agreed to this suggestion and has undertaken to this hon'ble court that it shall forthwith resume supply of water, through its tankers and continue its services uninterrupted. It has further agreed that in the event it seeks any amount beyond in excess of 70%, it shall furnish bank guarantees for such amount to the satisfaction of the respondent, who shall release payment against and to the extent of such bank guarantee."

15. The counsels further state that with the interim arrangement so worked out by this Court, the need to pursue the OMPs pending before the Single Judge and listed next on 18th January, 2021 will not arise and the said OMPs be also disposed of in terms of the interim arrangement so worked out by this Court.

16. As would be obvious from the proposals of the appellants and the respondent DJB, a broad consensus has been arrived at, with differences only of shape and form and which this Court, even otherwise, to make the compromise arrived at lawful, is entitled to make.

17. Accordingly, OMPs (I) (Comm) No. 389/2020, 390/2020, 391/2020 & 392/2020 listed next on the Board of the Single Judge on 18th January, 2021, are called to/transferred to this Bench (subject of course to the orders of Hon'ble the Chief Justice) and are also disposed of in terms of the orders passed in these appeals and copies of this order be also placed on the files of the said OMPs.

18. These appeals as well as the OMPs aforesaid are disposed of in terms of the following interim arrangement and which interim arrangement is without prejudice to the rights and contentions of the parties and without binding them in the Arbitral proceeding in any manner whatsoever and without creating any rights or equities in favour of any party and with liberty to the parties to, before the Arbitration Tribunal/s constituted in pursuance to the Arbitration Agreement between them, seek variation of this interim arrangement and to also, in their claims/replies to the claims before the Arbitration Tribunal/s, seek restitution if any flowing from this interim arrangement:-

A. The appellants, on or before 22nd December, 2020, file affidavits of undertaking to this Court, with advance copy to the counsel for the respondent DJB, of Shri Deepak Bhareja on behalf of the appellants in FAO(OS)(COMM) No.174 & 176/2020 and of Shri Gurpal Singh Dhamija on behalf of the appellants in FAO(OS)(COMM) No.173 and 175/2020, to (i) within two days of the respondent DJB making payment as under, resume and restore supply of water in terms of the contract with the respondent DJB; (ii) continue the said uninterrupted supply, till the payment by the respondent DJB of the invoices raised by the appellants and to, before disrupting the said supply, serve notice in writing of ten days on the respondent DJB; (iii) ensure that the said supply is not disrupted for any non-payment to staff etc. or for other reason attributable to the appellants; and, (iv) in the event of the Arbitral Tribunal so directing, within 60 days, refund to the respondent DJB, the amounts received from respondent DJB in terms of this order; the said affidavits of the deponents aforesaid to also affirm that the deponents have understood the consequences of breach of undertaking given to this Court.

B. The respondent DJB shall within 24 hours of being furnished with advance copies of affidavits aforesaid, pay to the appellants 70% of the due invoice amount for the months of August (if any, after deducting the amount already paid for the month of August), September, October, November, 2020, till the date the supply in terms of the contract was made by the appellants.

C. The appellants, within two days of the respondent DJB so making payment, shall resume uninterrupted supply of water in terms of the contract and in accordance with the contract and continue the said supply as undertaken hereinabove.

D. The appellants, on so resuming supplies, shall raise invoices on the respondent DJB in accordance with the contract and the respondent DJB shall process the same, again as provided in the contract and as done till now, and make payments to the extent of 70% of the due invoice amount, otherwise in accordance with and within the time stipulated in the contract.

E. If the appellants are desirous of receiving amounts in excess of 70% and up to the maximum due amount of the invoice, the appellant shall be entitled thereto from the respondent DJB subject to furnishing unequivocal, unconditional and absolute bank guarantee in favour of the respondent DJB for the amount so sought in excess, including for the months of August to October, November/December, 2020.

F. If ultimately the appellants are found entitled to amounts in excess to those paid under this arrangement, from the respondent DJB, the appellants shall be entitled to interest thereon in accordance with the contract.

G. Upon default by either party of performance of its parts of this interim arrangement, the other party, after serving notice in writing of not less than 10 days, shall be entitled to stop performance of its obligations under this interim arrangement.

19. The undertakings to this Court to be so furnished by the appellants are accepted by this Court and the deponents aforesaid are ordered to be bound therewith.

20. Whichsoever party defaults in compliance of its part of the interim arrangement aforesaid, shall be liable to be proceeded against therefor.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

DECEMBER 22, 2020
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