

1 20.1.2021

**F.M.A.T. 40 of 2021
With
CAN 1 of 2021**

**M/s. Ace Engineering Infratech(I) Pvt. Ltd.
Vs.
Bharat Heavy Electricals Ltd.**

**Mr. Reetobroto Mitra
Mr. SS. Dasgupta
Mr. Pawan Kumar Maheshawari
Ms. N. De For the Appellant.**

Mr. Aniruddha Bhattacharya ... For the Respondent.

Re: CAN 1 of 2021

The point involved in the appeal is very short.

By consent of learned counsel for the parties, we propose to dispose of the appeal today itself by dispensing with all formalities.

In our opinion there was not much of an alternative order which the learned judge could have passed in relation to the subject work contract between the parties which was terminated by the respondent and which does not permit specific performance.

Hence we find no infirmity in the impugned judgement and order made on 6th January, 2021.

S.D.

We only add to the said order by way of a modification that each of the parties shall nominate an official who shall jointly perform the activities mentioned in prayers (i), (ii), (iii) and (iv) of the stay petition.

For the convenience of the parties the prayers are set out herein below:

- i) “To finalize inventories of completed works after submission of RA bill 14 till date (approximate value ascertain USD 12,000/-);
- ii) Materials delivered at site of work which are not billed and lying at site in the custody of the opposite party (approximate value ascertain Rs.30,00,000/-)
- iii) Constructional materials/infrastructure deployed at the site of work lying in the custody of the opposite party;
- iv) Joint measurement of completed/uncompleted work.”

The above prayers shall be read with annexure-(H) and (J) to the stay petition.

Whatever dispute arises out of the above activities may be resolved at the arbitration. The above measurement work etc. shall be completed within three months from date.

The respondent will ensure that intervention of a third party will not interfere with the above work to be done in terms of this order.

The appeal (FMAT 40 of 2021) and the connected

application (CAN 1 of 2021) are disposed of.

(I.P. Mukerji, J.)

(Md. Nizamuddin, J.)