AP 255 of 2020
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Commercial Division
QUIPPO INFRASTRUCTURE LTD.
Vs.
AZZ INFRASERVICES LTD. & ANR.

For the Petitioners	: Mr. Swatarup Banerjee, Advocate Mr. Rajib Mullick, Advocate Mr. Rakesh Sarkar, Advocate
For the Respondents	: Mr. Utpal Bose, Sr. Advocate Ms. H. Chakraborty, Advocate Ms. Neelina Chatterjee, Advocate Mr. Suvodeep Chakraborty, Advocate
Hearing concluded on	: January 18, 2021
Judgment on	: January 21, 2021

DEBANGSU BASAK, J. :-

1. The petitioner has applied under Section 9 of the Arbitration and Conciliation Act, 1996 for interim protection.

2. Learned Advocate appearing for the petitioner has submitted that, the respondent No. 1 had participated in a tender floated by South Delhi Municipal Corporation for solid waste management. The respondent No. 1 has specialized in asset management business. The

respondent No. 2 has been set up as a special purpose vehicle incorporated at the instance of the respondent No. 1 for carrying out the specific work of south Delhi Municipal Corporation. Subsequent to the respondent No. 1 becoming the successful bidder, a concession agreement had been entered into between the South Delhi Municipal Corporation and the respondents herein on December 2, 2016 for a period of 8 years for the purpose of solid waste management.

3. Learned Advocate appearing for the petitioner has submitted that, the petitioner was instrumental in setting up a business of respondent No. 2. It had also arranged for finance for the machineries and equipment through a financer. The respondent had entered into a Master Services Contract for a period of 8 years with the petitioner on April 28, 2017. The respondent No. 2 had entered into a Master Lease Agreement dated May 5, 2017 with the financer. The parties had also entered into a escrow agreement dated October 4, 2017.

4. Learned Advocate appearing for the petitioner has submitted that, the claim of the petitioner is on account of the Master Service Contract. According to him, under the Master Service Contract, the respondents had agreed that, all payments received from the South Delhi Municipal Corporation will be put in the escrow account and

that, payments will be disbursed through the escrow account which would be made by considering the outstanding dues of the petitioner, the financer and other party in terms of the relevant contracts on a private basis.

5. Learned Advocate appearing for the petitioner has submitted that the respondent No. 1 had acted in breach of its obligation under the Master Service Contract. The respondent No. 1 unlawfully diverted money received from South Delhi Municipal Corporation and did not deposit the same in the escrow account. He has drawn the attention of the Court to the fact that the petitioner used to raise monthly invoices on the respondent No. 1 in lieu of consultancy provided for carrying out the work of South Delhi Municipal Corporation. The respondent No. 1 had failed to make regular payments. He has drawn the attention of the Court to the correspondence exchanged between the parties. He has submitted that, despite acknowledgment of liability, the respondent No. 1 has failed to pay the petitioner. In such circumstances, he has submitted that, the respondent No. 1 be restrained by an order of injunction from receiving any payment from South Delhi Municipal Corporation except for the purpose of

depositing the same in the escrow account and paying the parties out of the escrow amount including the petitioner.

6. In response to a query from the Court on the question of jurisdiction, learned Advocate appearing for the petitioner has relied upon various authorities and submitted that, this Hon'ble Court has the jurisdiction to try, entertain and determine the instant petition.

7. Learned Senior Advocate appearing for the petitioner respondent No. 1 has submitted that, the Master Services Agreement between the parties stood terminated on May 28, 2020. He has submitted that, since the Master Services Agreement stand terminated, the question of making payment to the petitioner does not arise. According to him, the petitioner is not providing the consultancy services in terms of the Master Services Agreement for the respondent No. 1 to pay the petitioner. According to him, no amount is due and payable by the respondent No. 1 to the petitioner.

8. Learned Advocate appearing for the respondent No. 1 has submitted that, a sum in excess of Rs. 15 crores is due and payable by the petitioner to the respondent by way of compensation. The respondents had suffered loss and damages due to the non performance of the contractual obligations of the petitioner during the

subsistence of the Master Services Contract dated April 28, 2017. The respondents had on numerous occasions informed the petitioner of its failure to perform its obligations under the Master Services Contract dated April 28, 2017. In fact, South Delhi Municipal Corporation had issued warning notice for non performance to the respondents.

9. During the hearing of the petition, the parties have filed an agreement in writing to refer the disputes to arbitration to the arbitrator named therein.

10. Since the respondents have not raised the issue of jurisdiction, and since, the Master Services Contract contains a forum selection clause with the Courts at Kolkata having selected forum and since the Master Services Contract provides for the seat of arbitration to be at Kolkata, I do not find any reason to enter into the arena of lack of jurisdiction.

11. As has been noted herein, the parties had filed a written agreement for appointment of an arbitrator to arbitrate the disputes. The parties to such agreement, are at liberty to take appropriate steps in accordance with law, for resolution of the disputes between them.

12. The petitioner has limited its claim against the respondents under the Master services contract dated April 28, 2017 only. The parties have admitted that, there are disputes and differences between them under the Master Service Contract dated April 28, 2017. The respondents had terminated the Master Service Contract dated April 28, 2017 on May 28, 2020. The respondent No. 1 in the letter of termination dated May 28, 2020 has alleged that, the petitioner had failed to provide requisite asset management consultancy to the petitioner for the last two years. The petitioner has also alleged that, due to the deficiency in service rendered by the petitioner, the equipments have not been operating on the full capacity and accordingly the quality of service provided is not up to the mark. By such letter of termination, the respondent No. 1 had demanded a sum of Rs. 8.5 crores from the petitioner towards penalty and damages. The respondent No. 1 has alleged that, the petitioner did not provide diligent and efficient services even after May 28, 2020.

13. The parties have disputes and differences between themselves with regard to the Master Service Contract. The respondent No. 1 had by the letter dated May 28, 2020 terminated the Master Service Contract. As to the issue whether and what amount is due and

payable by which party to whom, should await the decision of the arbitration. At the interim stage, it is not possible to state with certainty that, a quantified amount on an identified account is due and payable by one party to the other. In absence of such a finding, in my view, it would not be proper to grant any interim relief to any of the parties pending the arbitration. Moreover, the claims of the respective parties are money claims and that too, on account of damages. Discussing the conduct of the parties elaborately at this interim stage to assess the respective rights and liabilities in view would prejudice the arbitration. One of the grounds of refusing to grant an interim order is when the Court finds that money is an adequate compensation. Here the claims are money allegedly receivable.

14. In view of the discussions above, AP No. 255 of 2020 is dismissed without any orders to costs.

[DEBANGSU BASAK, J.]