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

Date of decision: 25th January, 2021

+ **TR.P.(C.) 6/2021 & CM APPL.1635/2021**

+ **TR.P.(C.) 7/2021 & CM APPL.1636/2021**

M/S. JAY PRESTRESSED PRODUCTS LTD. Petitioner

Through: Mr. Sahil Garg and Mr. Ankit Gupta,
Advocates. (M:9560690036)

versus

UNION OF INDIA THROUGH NORTHERN
RAILWAYS

..... Respondent

Through: Mr. Jagjit Singh and Mr. Vipin
Choudhary, Advocates.
(M:9711161241)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in hybrid mode (physical and virtual hearing).
2. These petitions have been filed by M/s Jay Prestressed Products Limited seeking transfer of two petitions under Section 34 of the Arbitration and Conciliation Act, 1996 pending before the Patiala House Courts to this Court.
3. The brief background is that tenders were invited by the Railways for manufacture and supply of pre-stressed mono-black line concrete (pre-tensioned type) for broad gauge (1673 mm) to RDSO Drg. No. T-2496 to suit 60 Kg. UIC rail for quantity 3,05,334 nos. and the Petitioner had submitted its offer on 15th January, 2009. The contract was awarded to the Petitioner on 16th December, 2009 and performance had started under the

contract. However, disputes arose between the parties leading to the imposition of liquidated damages upon the Petitioner. The Railway appointed an Arbitrator as per the conditions of the contract. The arbitration proceedings culminated into four different awards dated 26th March, 2019, all in favour of the Petitioner. Details of the liquidated damages which were imposed and the amounts awarded in each arbitration are set out herein below:

S. No.	Letter imposing Liquidated Damages	Amount of LD	Awarded amount
1.	187-S/10/B/TS/JPP/C S-162 dated 18.12.2012	Rs.88,58,173/-	Rs.4,97,589/-
2.	187-S/10/B/TS/JPP/C S-162 dated 29.08.2012	Rs.80,699,10/-	Rs.5,37,041/-
3.	187-S/10/B/TS/JPP/C S-162 dated 01.12.2011	Rs.16,03,708/-	Rs.25,88,796/-
4.	187-S/1017/TS/JPP/C S-162 dated 22.02.2012	Rs.31,26,735/-	Rs.25,88,796/-
5.	187-S/10/B/TS/JPP/C S-162 dated 14.09.2012	Rs.13,35,475/-	Rs.62,395/-

4. Since four separate awards were passed awarding four separate amounts, the Respondent filed four separate OMPs, the details of which are as under:

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S. No.	Award	Forum	Reference
1.	Award dated 12.03.2019 pertaining to Letter No.187-S/10/B/TS/JPP/CS-162 dated 18.12.2012	Delhi High Court	OMP (Comm) 352 of 2019
2.	Award dated 26.03.2019 pertaining to Letter No.187-S/10/B/TS/JPP/CS-162 dated 29.08.2012	Delhi High Court	OMP (Comm) 342 of 2019
3.	Award dated 12.03.2019 pertaining to Letter No. 187-S/B/TS/JPP/CS-162 dated 14.09.2012	Patiala House Courts	OMP (Comm) 127 of 2019
4.	Award dated 12.03.2019 pertaining to Letter No.187-S/10/B/TS/JPP/CS-162 dated 01.12.2011 and Letter No.187-S/1017/TS/JPP/CS-162 dated 22.02.2012	Patiala House Courts	OMP (Comm) 128 of 2019

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5. Out of the four OMPs, the first two are pending before the Delhi High Court and the OMPs at serial nos.3 and 4 are pending before the Patiala House Courts. The present transfer petitions have been moved seeking transfer of the cases pending in the Patiala House Courts to this Court.

6. Heard ld. counsels for the parties. This court had the occasion to consider the consequence of multiple arbitral tribunals, multiple awards and multiple challenges in **Gammon India Ltd. & Anr. v. NHAI [OMP 680/2011 (New No. O.M.P. (COMM) 392/2020), decided on 23rd June,**

2020]. It was observed therein as under:

“44. The issue of multiplicity in arbitral proceedings also needs to be effectively dealt with to ensure that a long-drawn arbitral journey, as in the present case, is avoided. Parties to arbitration are expected to adhere to a bona fide discipline of use of arbitral processes. There appears to be a clear need for streamlining the same. The Delhi High Court has issued several practice directions under the Act. One such direction when petitions under Section 9 of the Arbitration and Conciliation Act, 1996, are filed, it is mandatory for the party to mention that no other petition on the same cause of action was filed. In an attempt to further avoid multiplicity of Tribunals and inconsistent/contradictory awards, as has arisen in the present case, the following directions are issued:

- i. In every petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter, “Section 34 petition”), the parties approaching the Court ought to disclose whether there are any other proceedings pending or adjudicated in respect of the same contract or series of contracts and if so, what is the stage of the said proceedings and the forum where the said proceedings are pending or have been adjudicated.*
- ii. At the time when a Section 34 petition is being heard, parties ought to disclose as to whether any other Section 34 petition in respect of the same contract is pending and if so, seek disposal of the said petitions together in order to avoid conflicting findings.*
- iii. In petitions seeking appointment of an Arbitrator/Constitution of an Arbitral*

Tribunal, parties ought to disclose if any Tribunal already stands constituted for adjudication of the claims of either party arising out of the same contract or the same series of contracts. If such a Tribunal has already been constituted, an endeavor can be made by the arbitral institution or the High Court under Section 11, to refer the matter to the same Tribunal or a single Tribunal in order to avoid conflicting and irreconcilable findings.

iv. Appointing authorities under contracts consisting of arbitration clauses ought to avoid appointment or constitution of separate Arbitrators/Arbitral Tribunals for different claims/disputes arising from the same contract, or same series of contracts.”

7. There is no doubt as to the fact that the parties in all the petitions are the same. The contract concerned is also the same, however, the liquidated damages imposed are for different claims and four separate awards have been passed. This Court is of the opinion that the validity and otherwise of the imposition of liquidated damages ought to be comprehensively considered in one case, inasmuch as if the same are adjudicated before different forums, there is a possibility of there being contradictory findings.

8. Since the background of the liquidated damages may be similar in nature, it is deemed appropriate to transfer the two petitions pending before the Patiala House Courts i.e., OMP (Comm) No.127/2019 & 128/2019, to this Court, to be heard and disposed of along with OMP (Comm) No.352/2019 & 342/2019. The said petitions are stated to be listed before the appropriate Bench on 1st March, 2021. Accordingly, the Registry is directed to summon the records of the two cases pending before the Patiala

House Courts and list the same along with the matters pending before this Court on 1st March, 2021.

9. The present petitions are disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 25, 2021/dk/T

