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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 22ND DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE M. SUNDAR

Arb.Appln.No. 90 of 2022
and
O.A.Nos. 222 to 224 of 2022

In the Matter of the Request For Proposal dated 30.08.2016 and the Revised Purchase Order dated 20.07.2018. Contract Agreement dated 06.09.2018 executed between The Deputy Inspector General of Police, Technical Services and M/s.Larsen & Toubro Ltd., SW&C – BU and the Arbitration Agreement contained in Clauses 1.61-1.69 of the Contract Agreement.

And

In the matter of Section 9 of the Arbitration & Conciliation Act, 1996 (as amended).

Larsen & Toubro Ltd.,
Represented by its Authorised Signatory
Mr. Purushothaman P.,
Construction Smart World & Communications,
Mount Poonamallee Road,
Manapakkam, P.B.No. 979,
Chennai – 600 089.

... Applicant
(in all the applications)



1. The Deputy Inspector General of Police,
Technical Services,
Tamil Nadu Police Headquarters,
Kamarajar Salai,
Mylapore, Chennai – 600 004.
2. IDBI Bank Limited.,
Trade Finance, Specialised Corporate Branch,
Regd. Office at IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai – 400 005.

Branch Office at :
3rd Floor, Khivraj Complex,
480, Anna Salai,
Nandanam,
Chennai – 600 035.

3. ICICI Bank Limited.,
Transaction Banking Group,
Regd. Office at ICICI Bank Tower,
Near Chakli Circle,
Old Padra Road, Vadodara,
Gujarat – 390 007.

Branch Office at :
110, Prakash Presidium,
1st Floor, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai – 600 034.

... Respondents
(in all the applications)

Arb.Appln.No. 90 of 2022 :-

Arbitration Application praying that this Hon'ble Court be pleased to pass an order appointing an independent Neutral Expert Agency to conduct the Field Tests and the ATP in adherence to the terms of APCO P25 and TIA standards.

**O.A.No. 222 of 2022 :-**

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Original Application praying that this Hon'ble Court be pleased to pass Orders of ad-interim and interim injunction(s) restraining the 1st Respondent, their men, agents, or anyone acting through or under them from in any manner invoking or encashing the Bank Guarantees dated 27.07.2018 and 10.03.2022, procured by the Applicant and issued in favour of the 1st Respondent.

O.A.No. 223 of 2022 :-

Original Application praying that this Hon'ble Court be pleased to pass Orders of ad-interim and interim injunction(s) restraining the 1st Respondent, their men, agents, or anyone acting through or under them, from in any manner terminating the Contract dated 06.08.2018.

O.A.No. 224 of 2022 :-

Original Application praying that this Hon'ble Court be pleased to pass Orders of ad-interim and interim injunction(s) restraining the 1st Respondent, their men, agents, or anyone acting through or under them, from undertaking any actions pursuant to any purported termination of the Contract dated 06.08.2018 including by awarding any portion of the works to any other third party.



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This Arbitration Application along with these Original Applications coming on this day before this court for hearing in the presence of Mr.Satish Parasaran, Senior Counsel For M/s. Preethi Mohan, Advocates for the applicant in Arb.Appln.No. 90 of 2022 and O.A.Nos. 222 to 224 of 2022 and Mr.A.Edwin Prabakar, Special Government Pleader Assisted by M/s.S.V.Supraja, Government Advocate (CS), Advocates for the 1st Respondent in Arb.Appln.No.90 of 2022 and O.A.Nos. 222 to 224 of 2022 and Mr.K.Balamurali, For M/s. Shivakumar and Suresh (Law Firm) Advocates for the 2nd & 3rd Respondents in Arb.Appln.No.90 of 2022 and O.A.Nos. 222 to 224 of 2022 and upon reading the Judges Summons and the Affidavit of Purushothaman.P, filed in Arb.Appln.No. 90 of 2022 and O.A.Nos. 222 to 224 of 2022, and the learned Senior counsel for applicant having submitted that both the aforementioned bank guarantees viz, one dated 27.07.2018 bearing Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank) will be kept alive throughout the arbitral proceedings *inter alia* by renewing the same/renewing from time to time if the need arises and this Court doth recording the said submission, and **it is ordered as follows:-**



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That the Hon'ble Mr. Justice Badar Durrez Ahmed, former Chief Justice of High Court of Jammu and Kashmir, residing at No.14, Friends Colony (West), New Delhi – 110 065 (Mob : 70422 05786), E-mail: badardurrez.arb@gmail.com, be and is hereby appointed as Sole Arbitrator.

2) That The Deputy Inspector General of Police, Technical Services, Tamil Nadu Police Headquarters, the 1st Respondent in O.A.No.222 of 2022 be and are hereby restrained by an order of interim injunction for a period of two weeks from this date (i.e.) till 06.05.2022 or the first sitting of the Hon'ble Arbitrator appointed herein, whichever is later from invoking two Bank Guarantees [one dated 27.07.2018 bearing Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank)].

3) That the applicant herein shall be at liberty to present copies of captioned four applications or replicate the same in any other form, present them before the Hon'ble Arbitrator appointed herein.



4) That the Hon'ble Arbitrator appointed herein, shall be at liberty to consider the same on its own merits and in accordance with law notwithstanding this limited judicial order.

5) That both parties hereto, shall be at liberty to present other applications also either under Section 17 of A and C Act or any other provisions of A and C Act.

6) That the Hon'ble Sole Arbitrator appointed herein, be and is hereby requested to adopt the fourth Schedule to A and C Act as regards fee.

7) That the mode of hearing (including hearing on a video-conference platform) is left to the discretion of Hon'ble Arbitrator appointed herein, and the convenience of the parties before him.

8) That there shall be no orders as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 22ND DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)



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ED

27.04.2022

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Arb.Appln.No. 90 of 2022

And

O.A.Nos. 222 to 224 of 2022

ORDER

DATED : 22.04.2022

THE HON'BLE MR. JUSTICE

M. SUNDAR

FOR APPROVAL: 28.04.2022

APPROVED ON : 28.04.2022

Copy To :

The Hon'ble Mr. Justice Badar Durrez Ahmed,
Former Chief Justice,
High Court of Jammu and Kashmir,
Sole Arbitrator,
No.14, Friends Colony (West),
New Delhi – 110 065.
(Mob : 70422 05786)
E-mail : badardurrez.arb@gmail.com.

(With Covering Letter)



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.Appln.No.90 of 2022

and

O.A.Nos.222 to 224 of 2022

Larsen & Toubro Ltd.,
Represented by its Authorised Signatory Mr.Purushothaman.P
Construction Smart World & Communications
Mount Poonamalle Road
Manapakkam, P.B.No.979
Chennai - 600 089

Applicant in Arb.application and OAs

Vs.

1. The Deputy Inspector General of Police
Technical Services
Tamil Nadu Police Headquarters,
Kamarajar Salai, Mylapore,
Chennai 600 004.

2. IDBI Bank Limited,
Trade Finance, Specialised Corporate Branch,
Regd. Office at IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai 400 005.

Branch Office at:
3rd Floor, Khivraj Complex, 480 Anna Salai,
Nandanam, Chennai 600 035.



3. ICICI Bank Limited,
Transaction Banking Group,
Regd. Office at ICICI Bank Tower,
Near Chakli Circle, Old Padra Road,
Vadodara, Gujarat 390 007.

Branch Office at:
110, Prakash Presidium,
1st Floor, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai 600 034.

... Respondents

Prayer in Arb.Appl.No.90 of 2022: Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules read with Section 9(1)(ii)(e) of the Arbitration and Conciliation Act, 1996 to appoint an independent Neutral Expert Agency to conduct the Field Tests and the ATP in adherence to the terms of APCO P25 and TIA standards.

Prayer in O.A.No.222 of 2022: Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules read with Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996 to order an ad-interim and interim injunction(s) restraining the 1st respondent, their men, agents, or anyone acting through or under men from in any manner invoking or encashing the Bank Guarantees dated 27.07.2018 and 10.03.2022, procured by the Applicant and issued in favour of the 1st respondent.



Prayer in O.A.No.223 of 2022: Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules read with Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996 to pass an order of ad-interim and interim injunction(s) restraining the 1st respondent, their men, agents, or anyone acting through or under men from in any manner terminating the Contract dated 06.08.2018.

Prayer in O.A.No.224 of 2022: Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules read with Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996 to pass an order of ad-interim and interim injunction(s) restraining the 1st respondent, their men, agents, or anyone acting through or under men from undertaking any actions pursuant to any purported termination of the Contract dated 06.08.2018 including by awarding any portion of the works to any other third party.

For Petitioner in all applications : Mr.Satish Parasaran
Senior Counsel
for Ms.Preeti Mohan

For R1 in all applications : Mr.A.Edwin Prabakar
Special Government Pleader
Assisted by Ms.S.V.Supraja
Government Advocate (CS)

For R2 and R3 in all applications : Mr.K.Balamurali
of M/s.Shivakumar and Suresh
(Law Firm)



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COMMON ORDER

This common order will govern/dispose of the captioned four applications.

2. Captioned four applications have been presented in this Court under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity], i.e., various sub-sections, clauses and sub-clauses of Section 9 of A and C Act.

3. Owing to the trajectory the captioned matters took in the Admission Board, it is not necessary to set out facts in great detail. In other words, short facts shorn of elaboration will suffice. Short facts are that the first respondent floated a 'Request For Proposal' ['RFP'] for upgradation of existing conventional analog from 'Very High Frequency' [VHF] communication system in Chennai-Tiruchirappalli cities with 'Ultra High Frequency' [UHF] as part of Digital Trunking narrowband radio system; that the applicant company (hereinafter 'L & T' for the sake of brevity, convenience and clarity) responded to RFP; that this RFP and response of L



followed by a contract captioned 'Revised Contract Agreement' dated 06.09.2018 (hereinafter 'primary contract' for the sake of convenience and clarity); that clause 1.61 to 1.69 bundled together under the caption 'Dispute Resolution' qua primary contract serves as arbitration agreement between L & T and first respondent i.e., 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act; that primary contract was operated; that when the primary contract was operated, arbitrable disputes arose *inter alia* pertaining to alleged failure to meet basic objectives of the project, alleged lack of adequate / required technical competence, alleged delayed execution of process, alleged financial loss to first respondent etc.,; that it is to be noted that the adumbration here is not an exhaustive list of arbitrable disputes but it is only a thumbnail sketch of the arbitrable disputes that have arisen between L & T and first respondent; that first respondent issued a 'show-cause notice dated 05.04.2021 bearing reference C.No.L1/MPF/PTB/13975/2016' (hereinafter 'said SCN' for the sake of convenience and clarity) *inter alia* setting out these allegations and calling upon L & T to show-cause as to why action should not be taken against L & T by way of cancellation of purchase order, termination of contract, forfeiture of Bank Guarantee etc.,; that a fortnight's time was granted to L & T to respond to said SCN; that L & T responded to said SCN by way of a detailed reply dated 19.04.2022; that this reply of L & T to said



SCN was duly served on the first respondent on 20.04.2022; that under pain and imminent threat of coercive action, captioned applications under Section 9 of A and C Act have been moved with various prayers which have been extracted and set out supra.

4. Before proceeding further, this Court deems it appropriate to extract and reproduce the aforementioned Clauses 1.61 to 1.69 captioned 'Dispute Resolution', which serves as arbitration agreement between the parties and the same read as follows:

'Dispute Resolution

1.61 Any dispute or difference, whatsoever, arising among the parties to this agreement arising out of in relation to this agreement shall be resolved by the parties through mutual consultation, in good faith and using their best endeavours. To this end, the parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate discussions between them/their representatives or officers;

1.62 Except as otherwise provided elsewhere in the Contract, if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof, the same shall be decided by a sole Arbitrator to be appointed by the Tender Inviting Authority.

1.63 If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings,



another Arbitrator shall be appointed by the Tender Inviting Authority. The Arbitrator so appointed shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall proceed de novo.

1.64 It is a term of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

1.65 It is also a term of the contract that neither party to the contract shall be entitled to seek interest and the arbitrator should not grant interest.

1.66 The Arbitral Tribunal shall give reasoned award and the same shall be final, conclusive and binding on the parties.

1.67 The venue of the arbitration shall be Chennai and language English

1.68 The fees of the arbitrator and expenses incidental to the arbitration proceedings shall be borne equally by the parties.

1.69 Subject to as aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 and any Statutory modifications of re-enactment in lieu thereof shall apply to the arbitration proceedings under this clause.'

5. Reverting to the trajectory the captioned applications took before this Court today, Mr.Satish Prasaran, learned Senior Advocate instructed by counsel on record for L & T Ms.Preeti Mohan, who is before this Court very fairly submitted that if the prayer for ad-interim injunction against invocation of two Bank Guarantees, one dated 27.07.2018 bearing

Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI



Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank) may be considered in terms of interim protection under Section 9 of A and C Act for the present leaving open all other questions.

6. Mr.A.Edwin Prabakar, learned Special Government Pleader (CS) assisted by Ms.S.V.Supraja, learned Government Advocate, who is before this Court, accepted notice on behalf of first respondent. Mr.K.Balamurali of M/s.Shivakumar and Suresh (Law Firm) accepted notice on behalf of Respondents 2 and 3. This completes the array of counsel representing all the parties in the captioned four applications. To put it differently, all the parties in the captioned applications are now represented by counsel and captioned applications were taken up for disposal.

7. The trajectory the applications took in the hearing today (alluded to supra) brings to light that there is no dispute or contestation about the existence of Clauses 1.61 to 1.69 i.e., arbitration agreement in the RFP, as there is no dispute or disagreement about the existence of arbitration agreement, respondents 2 and 3 are only formal parties as they



Arbitrator has now become inevitable, parties to the RFP i.e., L & T and first respondent submitted that it would be desirable to have an arbitrator appointed so that the arbitrable disputes can be adjudicated upon. This is the reason why this Court at the outset mentioned that it is not necessary to dilate much on facts (short facts shorn of elaboration will suffice). Therefore, captioned four applications are being disposed of by this short order.

8. Captioned four applications are disposed of by making following order:

a) Hon'ble Mr. Justice Badar Durrez Ahmed (Retd.),
Former Chief Justice of High Court of Jammu and Kashmir,
residing at No.14, Friends Colony (West), New Delhi - 110 065
[Mob: 70422 05786], E-mail: badardurrez.arb@gmail.com is
appointed as sole Arbitrator;

b) There shall an order of interim injunction
restraining the first respondent from invoking two Bank
Guarantees [one dated 27.07.2018 bearing Bank Guarantee No.
180380IBGP00582 issued by second respondent (IDBI Bank)
and another dated 10.03.2022 bearing 0009NDLG00095522
issued by third respondent (ICICI Bank)] forming subject



matter of one of the captioned applications, namely O.A.No.222 of 2022 for a fortnight from today or the first sitting of the Hon'ble Arbitrator whichever is later;

(c) Learned Senior counsel for applicant on instructions from the counsel on record (who in turn has taken instructions from the applicant company) submits that both the aforementioned bank guarantees viz, one dated 27.07.2018 bearing Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank) will be kept alive throughout the arbitral proceedings *inter alia* by renewing the same/renewing from time to time if the need arises. This submission is recorded.

d) It is open to the applicant to present copies of captioned four applications or replicate the same in any other form, present them before the Hon'ble Arbitrator and it is open to the Hon'ble Arbitrator to consider the same on its own merits and in accordance with law notwithstanding this limited judicial order;

e) Though obvious, it is made clear that it is open to both parties to present other applications also either under



Section 17 of A and C Act or any other provision of A and C Act;

f) Considering that the first respondent is State, this Court deems it appropriate to request the Hon'ble sole Arbitrator to adopt the fourth schedule to A and C Act as regards fee;

g) The mode of hearing (including hearing on a video-conference platform) is left to the discretion of Hon'ble Arbitrator and the convenience of the parties before him;

9. Captioned applications are disposed of in the aforesaid manner.

There shall be no orders to costs.

Sd./- M.S.J,
22/04/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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