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A.No.3044 of 2022 in A.No.163 of 2022
in Arb.O.P.(Com.Div.) No.18 of 2022

A.No.3044 of 2022 in A.No.163 of 2022
and A.No.163 of 2022
in
Arb.O.P.(Com.Div.) No.18 of 2022

M.SUNDAR.J

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.07.2022, which reads as follows :

'Read this in conjunction with and in continuation of separate orders made in A.No.163 of 2022 and main Arb.OP(Com.Div) No.18 of 2022 both dated 29.06.2022 which read as follows:

'Proceedings in A.No.163 of 2022

Read this in conjunction with and in continuation of separate proceedings made in the main Arb.OP today, which reads as follows:

'Captioned Arb.OP has been presented in this Court on 14.12.2020 assailing an 'arbitral award dated 14.09.2020' [hereinafter 'impugned award' for the sake of brevity, convenience and clarity] made by a three member 'Arbitral Tribunal' ['AT' for the sake of brevity]. The protagonists of captioned Arb.OP were respondents before AT and the protagonists shall hereinafter be collectively referred to as 'State' (in this order) for the sake of convenience. Mr.J.Ravindran, learned Additional Advocate General along with Mr.Edwin Prabakar, learned Special Government Pleader on behalf of State is before this Court.

2. Adverting to impugned award, learned State



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counsel submits that arbitrable disputes erupted qua an agreement between State and the 'sole respondent' in captioned Arb.OP [hereinafter 'contractor' for the sake of brevity] for Integrated Traffic Management System vide a 'Request For Proposal' ['RFP']. Contractor as claimant before AT made claims under eight heads inter alia turning on breach qua RFP and this led to liquidated damages and other issues. Suffice to say that in and by the impugned award, contractor was awarded certain sums of money under four out of eight heads of claims, besides future interest at 8% per annum and costs. To be noted, costs is also one head of claims.

*3. Adverting to the grounds of challenge, learned Additional Advocate General submits that challenge to impugned award is inter alia predicated on Section 34(2)(b)(ii) Clauses (i) and (ii) of Explanation 1 thereat. It is submitted that loss of profits has been awarded arbitrarily and this offends **Hind Construction** principle (**Hind Construction Contractors Vs. State of Maharashtra** reported in **AIR 1979 SC 720**).*

4. Considering the facts and circumstances of the case and the nature of challenge, issue notice regarding admission under Rule 8(i)(b) of 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC' Rules for the sake of convenience and clarity]. Mr.S.R.Raghunathan, learned counsel for contractor, who is on caveat, accepts notice on behalf of lone respondent. Captioned Arb OP shall be heard out for admission in the light of this notice regarding admission in the ensuing listing/s.

List after four(4) weeks. List on 28.07.2022.'

2. Learned Additional Advocate General Mr.J.Ravindran, along with Mr.Edwin Prabakar, learned Special Government Pleader and Mr.S.R.Raghunathan, learned counsel along with Mr.Vigneshwar Elango, learned counsel for respondent are before this Court.



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3. Both learned counsel submit that the respondent-contractor has launched a Execution Petition vide EP.SR.No.48537 of 2021. Be that as it may, though Execution Petition is at the SR stage, this Court is informed that an application in A.No.3489 of 2021 was taken out by the respondent, in and by an order dated 22.04.2022 learned Master has passed orders inter alia directing disclosure of assets. Learned Additional Advocate General submits on instructions that an affidavit has been filed before learned Master setting out the quantum of money set apart for this project which by itself is sufficient disclosure.

4. Be that as it may, learned State counsel also submits that the option of assailing the aforementioned order of learned Master under Order XIV Rule 12 of Original Side Rules is being examined.

5. Be that as it may, in the light of the Execution Petition and orders made by learned Master on instructions from learned State counsel, learned Additional Advocate General requests this Court to consider the prayer for interim stay.

6. Mr.S.R.Raghunathan, learned counsel was heard as he is on caveat. Opposing the request for stay, learned counsel submitted that contractor has ploughed in substantial sums of money qua RFP. Contractor's equipments are with the State (to be noted submission that equipments are with the State is disputed by State Counsel). Learned counsel for caveator further submitted that there is likelihood of considerable difficulty for contractor to see the colour of the coin qua impugned award as according to learned counsel in matters of similar nature, the contractor is tossed around by saying



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that effects/properties do not belong to the Department concerned when attachment is resorted to as mode of execution. To put it differently, though applicants are State, realization of money in execution process becomes a challenge owing to such scenarios is learned caveator counsel's say.

7. Be that as it may, the submission of learned State Counsel captured in the main proceedings i.e., proceedings that a sum of little over Rs.1.30 crores has been set apart for the project which is the subject matter of RFP and this sum is safe/secure, is taken note of.

8. This Court has carefully considered the submissions in captioned application, orders made in the main Arb.OP, facts and circumstances of this case.

9. This Court has also taken note of proviso to sub-section (3) of Section 36 of A and C Act. In the light of mandate qua proviso to sub-section (3) of Section 36 of A and C Act, considering that the award excluding interest is for a total sum of Rs.37,28,30,746/- (Rupees Thirty seven crores twenty eight lakhs thirty thousand seven hundred and forty six only) rounding it off to Rs.40 crores, there shall be an order of interim stay of impugned award, an order of interim stay in all further proceedings vide A.No.3489 of 2021 before learned Master and EP.SR.No.48537 of 2021 subject to the condition that the applicants-State deposit 50% of aforementioned rounded off sum of Rs.40 crores i.e., Rs.20 crores within four (4) weeks from today i.e., on or before 27.07.2022.

10. This Court (as already alluded to supra) has taken note of



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the stated position of State that a sum of about Rs.130 crores has been set apart for RFP which has culminated in the impugned award and therefore, instant order is being made as deposit of Rs.20 crores from and out of this sum set apart in an interest yielding deposit (to the credit of captioned main Arb.OP) will be a fair balancing of rights. To be noted, this deposit is obviously subject to outcome of captioned main Arb. OP which will be heard out qua notice regarding admission in due course.

11. Deposit shall be kept by Registry in a interest bearing account in accordance with prevailing procedure. If the aforementioned deposit is not made, captioned stay petition will stand dismissed without further reference to this Court.

Captioned stay petition to be listed along with main Arb OP on 28.07.2022.'

'Proceedings in Arb.OP (Com.Div) No.18 of 2022

Captioned Arb.OP has been presented in this Court on 14.12.2020 assailing an 'arbitral award dated 14.09.2020' [hereinafter 'impugned award' for the sake of brevity, convenience and clarity] made by a three member 'Arbitral Tribunal' ['AT' for the sake of brevity]. The protagonists of captioned Arb.OP were respondents before AT and the protagonists shall hereinafter be collectively referred to as 'State' (in this order) for the sake of convenience. Mr.J.Ravindran, learned Additional Advocate General along with Mr.Edwin Prabakar, learned Special Government Pleader on behalf of State is before this Court.



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2. *Adverting to impugned award, learned State counsel submits that arbitrable disputes erupted qua an agreement between State and the 'sole respondent' in captioned Arb.OP [hereinafter 'contractor' for the sake of brevity] for Integrated Traffic Management System vide a 'Request For Proposal' ['RFP']. Contractor as claimant before AT made claims under eight heads inter alia turning on breach qua RFP and this led to liquidated damages and other issues. Suffice to say that in and by the impugned award, contractor was awarded certain sums of money under four out of eight heads of claims, besides future interest at 8% per annum and costs. To be noted, costs is also one head of claims.*

3. *Adverting to the grounds of challenge, learned Additional Advocate General submits that challenge to impugned award is inter alia predicated on Section 34(2)(b)(ii) Clauses (i) and (ii) of Explanation 1 thereat. It is submitted that loss of profits has been awarded arbitrarily and this offends **Hind Construction** principle (**Hind Construction Contractors Vs. State of Maharashtra** reported in **AIR 1979 SC 720**).*

4. *Considering the facts and circumstances of the case and the nature of challenge, issue notice regarding admission under Rule 8(i)(b) of 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC' Rules for the sake of convenience and clarity]. Mr.S.R.Raghunathan, learned counsel for contractor, who is on caveat, accepts notice on*



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behalf of lone respondent. Captioned Arb OP shall be heard out for admission in the light of this notice regarding admission in the ensuing listing/s.

List after four(4) weeks. List on 28.07.2022.'

2. Captioned application [A.No.3044 of 2022] has been taken out with a prayer for extension of time qua deposit ordered in A.No.163 of 2022 in and by aforementioned order dated 29.06.2022.

3. Mr.Edwin Prabakar, learned Special Government Pleader along with Mr.P.Harish, learned Government Advocate, who is before this Court on behalf of applicants submits that four weeks time frame i.e., four weeks from 29.06.2022 elapsed yesterday i.e., 27.07.2022. Therefore, A.No.163 of 2022 technically stands dismissed owing to paragraph 11 thereat.

4. Be that as it may, adverting to the support affidavit in captioned application more particularly paragraph 4 thereat, learned State counsel submits that the applicants require some more time to comply with the order of this Court dated 29.06.2022 i.e., order of deposit owing to procedural requirements in the Government machinery.

5. Mr.S.R.Raghunathan, learned counsel for respondent who is before this Court very fairly submitted that he is not opposing the prayer and extension can be at the discretion of this Court.

6. From the support affidavit in the captioned application and the submissions of learned Special Government Pleader, it comes to light that the applicants have accepted the interim order dated 29.06.2022 in A.No.163 of 2022 but they only need some more time



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to make the deposit and that is owing to procedural requirements i.e., internal functioning of the Government machinery. Owing to the facts and circumstances of the case on hand and the fair stand taken by learned counsel for respondent, this Court deems it appropriate to accede to the request in the captioned application albeit by extending the time by four (4) weeks [to be noted, prayer is for extension of time by eight weeks]. For this purpose, interim order dated 29.06.2022 in A.No.163 of 2022 in Arb.OP(Com.Div) No.18 of 2022 is resuscitated by this order in captioned application.

7. Time extension prayer in captioned application [A.No.3044 of 2022] is acceded to by extending the time for deposit of Rs.20.00 crores up to 25.08.2022. As the earlier interim order dated 29.06.2022 is resuscitated, the order of interim stay of impugned award will operate.

Prayer acceded to. List captioned application along with main Arb.OP(Com.Div) No.18 of 2022 on 25.08.2022.'

2. In the light of earlier proceedings more particularly paragraph 6 thereat, A.No.163 of 2022 stood/stands resuscitated.

3. Today, advertng to earlier proceedings, Mr.Edwin Prabakar, learned Special Government Pleader and Mr.Vigneshwar Elango representing Mr.S.R.Raghunathan, learned counsel for respondent submit in one voice



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that the condition of deposit of Rs.20.00 crores has since been complied with
and a Memo of Compliance has been filed by State.

4. The interim stay granted in A.No.163 of 2022 is made absolute and
application is closed. Recording the compliance A.No.3044 of 2022 is
closed. Both applications disposed of in the aforesaid manner.

25.08.2022

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