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A.No.163 of 2022
in Arb.OP (Com.Div) No.18 of 2022

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M.SUNDAR, J

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 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%



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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.

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



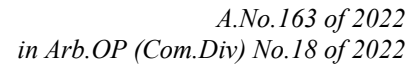
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may, though Execution Petition is at the SR stage, this Court is informed that an application in A.No.3489 of 2021 was taken out by the respondent, in and by an order dated 22.04.2022 learned Master has passed orders *inter alia* directing disclosure 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



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



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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 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.



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

29.06.2022
(2/2)

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