



\$~4

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

% *Date of Decision: 12th July, 2023*

+ O.M.P.(I) (COMM.) 17/2023 & I.A. 11588/2023, 12329/2023

RUDRABHISHEK ENTERPRISES LIMITED

& ANR.

..... Petitioners

Through: Mr. Joydip Bhattacharya,
Mr. Satyaarth Balajee Sinha and Ms. Livya
Lalu, Advocates along with Mr. Kunal
Sawhney, AR-1 and Mr. Kundan Singh,
AR-2.

versus

**SHREEMAA INFRAREALTY PRIVATE
LIMITED**

..... Respondent

Through: Mr. Gautam Das, Ms. Sanjana,
Mr. Akhilesh Singh and Ms. Pinki Sah,
Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed by the Petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') seeking the following reliefs:-

“(i) Pass an ad-interim ex-parte order thereby granting stay on illegal termination vide termination notices dated 19.12.2022 (Document-H) and 20.12.2022 (Document-J);

(ii) Pass an ad-interim ex-parte order directing the respondents not to re-arrange/assign any work covered under the EPCM Agreement to any third party or by itself;

(iii) Pass an ad-interim ex-parte order directing the respondents to furnish a security equivalent to the petitioners' claim of Rs.9,19,65,915/- (Nine Crore Nineteen Lakh Sixty Five Thousand



Nine Hundred and Fifteen Rupees Only) in order to secure the amount in dispute;”

2. Disputes arose between the parties with respect to the Engineering, Procurement, Construction and Marketing Agreement (‘EPCM’) dated 25.06.2018. By the said Agreement the Respondent awarded a Residential Township project ‘Shri Krishna Vilas Project’ to the Petitioners on turnkey basis for a period of five years, which according to the Petitioners commenced from the date of commencement of work after ‘Notice to Commence Work’ was given by the Respondent, subject to registration of the project under RERA by the Respondent and handing over the site/land free from any encumbrances.

3. It is Petitioners’ pleaded case that the work could not commence under the EPCM Agreement prior to June/July, 2021 owing to multiple factors, some of which are attributable to the Respondent viz. delayed registration of the project with RERA; non-issuance of 60 days ‘Notice to Commence Work’; not providing the land/site free from encumbrances etc. It is also stated by the Petitioners that the situation aggravated on account of the Pandemic COVID 19 during which period no work could be carried out and the time for completion of the project was extended by six months and subsequent thereto on 09.06.2020 Respondent issued a work order for construction of Block ‘A’. Despite there being no fault of the Petitioners, Respondent illegally issued notices dated 19.12.2022 and 20.12.2022 to the Petitioners for termination of the work order on ground of delay, to which a response was filed highlighting that no delay could be attributed to the Petitioners. It is in these circumstances



that Petitioners filed the present petition seeking *status quo* on the termination notices dated 19.12.2022 and 20.12.2022, amongst other reliefs.

4. On 24.01.2023, this Court granted two weeks' time to the Respondent to file reply to the petition and directed the parties to maintain *status quo*. Reply has been filed by the Respondent disputing the stand of the Petitioners and alleging that termination notices were issued not only on ground of delay in completion of the project but on various other grounds such as slow pace of construction work, inadequate manpower, non-compliance of safety concerns etc. and further stating that being a determinable agreement, Respondent was well within its rights to issue termination notices.

5. When the petition was taken up for hearing today, at the outset, counsels for the parties informed the Court that vide order dated 07.07.2023 a Co-ordinate Bench of this Court has appointed Justice Tejinder Singh Dhindsa (Mobile No. 7837049208), former Judge of the Punjab and Haryana High Court, as Sole Arbitrator to adjudicate the disputes between the parties pertaining to the EPCM Agreement dated 25.06.2018 in Arb. Pet. No. 627/2023. Copy of the order has been handed over to the Court.

6. Having given a thoughtful consideration, this Court is of the view that once the Arbitral Tribunal has been constituted and this Court is yet to begin hearing of the petition on merits, it would be appropriate that the Arbitral Tribunal decides the interim relief by treating this petition as an application under Section 17 of the 1996 Act. None of the parties are averse to this course of action and it is nobody's case that the remedy under Section 17 is inefficacious. This



Court therefore sees no impediment in disposing of this petition with liberty to the parties to approach the learned Arbitrator to fix a date for hearing on the interim relief.

7. Learned counsel for the Respondent expresses an urgency in the matter since a *status quo* order is operating against the Respondent with respect to the termination notices. This Court finds merit in the contention of the Respondent that the matter with respect to interim relief needs expeditious hearing. Accordingly, with a view to expedite the hearing before the learned Arbitrator, it is directed that the Registry shall forward this petition along with the entire record to the office of the learned Arbitrator within two weeks from today.

8. Looking at the urgency in the matter, the learned Arbitrator is requested to make every endeavour to decide the application under Section 17 as expeditiously as possible, after entering upon reference. It is made clear that this Court has not expressed any opinion on the merits of the case of the respective parties and it is open to the learned Arbitrator to continue or vacate or vary or modify the *status quo* order granted by this Court on 24.01.2023, in accordance with law and having regard to the facts and circumstances of the case.

9. Interim order dated 24.01.2023 shall continue till the decision is taken by the learned Arbitrator.

10. Petition along with pending applications stand disposed of.

CCP (O) 17/2023 and 22/2023

11. These contempt petitions have been filed by the Petitioners alleging wilful disobedience of the *status quo* order passed by this Court on 24.01.2023. Learned counsel for the Petitioners submits that he has instructions to prosecute the contempt petitions since contempt



is a matter between the alleged Contemnor and the Court.

12. Accordingly, list the contempt petitions on 26.07.2023.

JULY 12, 2023/shivam

JYOTI SINGH, J



न्यायमेव जयते