



\$~71

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

% *Date of Decision: 21st August 2023*

+ O.M.P. (COMM) 191/2023 & I.A. 9858/2023

EASYPHOTOVOLTECH PVT LTD Petitioner
Through: Mr. Zeyaul Haque, Advocate

versus

BENARA BEARINGS AND PISTONS
LTD. Respondent
Through: Mr. Himanshu Gupta, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 laying a challenge to an interim award dated 10.11.2022 passed in I.A. 06/2022 and I.A. 07/2022 by the learned sole Arbitrator. Arguments have been heard at length and the Court is apprised that arbitration proceedings have now reached the stage of final arguments which are scheduled on 31.08.2023 before the learned sole Arbitrator.

2. Concern or the grievance of the Petitioner is three-fold. Firstly, it is argued that while passing the interim award, learned sole Arbitrator has made observations which are in the nature of finally deciding the issues in the claim petition even without recording evidence and were not warranted at this stage. The consequence of

Signature Not Verified

Signed By: KAMAL KUMAR

Signing Date: 20.08.2023
22:57:31

these observations is that nothing further remains for the Arbitral

O.M.P.(COMM) 191/2023



Tribunal to adjudicate or for the Petitioner to argue. Attention of the Court is drawn to several paragraphs of the interim award to substantiate this argument. The second contention is that the amount of Rs.78,26,749/- could not have been awarded as Petitioner has placed several arguable points showing that the amount is not payable. Thirdly, while the learned Arbitrator had acceded to the request of the Petitioner to preserve and not to destroy any or all communications between the Bankers and the Claimants/Respondents herein, however, the Petitioner ought to be permitted to inspect those documents so that it is able to effectively defend its case during the arbitration proceedings.

3. Learned counsel for the Respondent, after canvassing some arguments, on instructions, submits that he has no objection if the Court passes an order directing that the conclusions arrived at by the learned Arbitrator while passing the interim award will not come in the way of the final adjudication of the matter. He further submits that insofar as the interim award with respect to a sum of Rs.78,26,749/- is concerned, Petitioner be directed to deposit the said amount in this Court since an execution petition being O.M.P. (ENF) (COMM) 63/2023 is already pending and is next listed before the Executing Court on 11.09.2023. Learned counsel also seeks permission to withdraw the amount when deposited, subject to furnishing a Bank Guarantee of the like amount.

4. I have heard the learned counsels for the parties and examined their submissions.

5. In my view, since the arbitral proceedings are at the stage of final arguments, it would be appropriate to dispose of this petition



with the following directions:-

- (i) The conclusions arrived at by the learned Arbitrator in paragraphs 6, 16 and 17 of the interim award, assailed before this Court, which have the trappings of a final award, will not come in the way of final adjudication of the case, on merits.
- (ii) Petitioner shall deposit the awarded amount in this Court before the Registrar General within a period of six weeks from today and it would be open to the Respondent to withdraw the same, subject to furnishing a Bank Guarantee and subject to any order passed by the Executing Court.
- (iii) Insofar as prayer by the Petitioner that it may be permitted to inspect the records directed to be preserved by the learned Arbitrator, suffice would it be to state that it is open to the Petitioner to file an appropriate application before the learned Arbitrator seeking inspection of the preserved records and on such application being filed, it would be open to the Arbitrator to decide the same in accordance with law. However, considering the fact that the matter is coming up for final arguments on 31.08.2023, if the application is filed by the Petitioner on or before 29.08.2023, the same shall be expeditiously disposed of so that the date of final arguments is not deferred on this score.

6. It is made clear that any deposit or withdrawal will be subject to the final outcome of the execution proceedings or the final award and



that this Court has not expressed any opinion on the merits of the case.

7. Petition along with pending application is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 21, 2023/kks/shivam