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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 29th November, 2023

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ARB.A. (COMM.) 50/2023**HQ PROJECT VARSHA MINISTRY OF DEFENCE NAVY
UNION OF INDIA Petitioner****Through: Ms. Aishwarya Bhati, ASG with Mr.
Kapil Arora, Ms. Palak Nagar, Ms.
Prashasthi Bhat & Mr. Anant Mishra,
Advocates.****versus****NAVAYUGA VAN OORD JV Respondent****Through: Mr. Parag Tripathi, Sr. Advocate with
Mr. Saurav Agarwal, Mr. Manik
Dogra, Ms. Aakansha Kaul, Mr.
Shantanu Agarwal, Mr. Harshit
Malik, Ms. Sulekha Agarwal, Mr.
Manas Arora, Ms. Allaka M., Mr.
Apoorv, Mr. Anirudh Dogra & Mr.
Dhruv, Advocates.****CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****I.A. 23641/2023 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A & C Act, 1996"*) has been filed on behalf of the petitioner to set aside the impugned Order dated 17.09.2023 passed by the Arbitral Tribunal in I.A. No. 2/2023 under Section 17 of A & C, 1996 filed by the respondent.
4. Mr. Saurav Agarwal, learned counsel for the respondent, is present on



advance notice.

5. Ms. Aishwarya Bhati, learned Additional Solicitor General of India, on behalf of the petitioner submits that the petitioner is aggrieved by the impugned Order dated 17.09.2023, only to the extent it makes an assertion that *“termination of contract of the Claimant-Contractor and any consequential action taken thereof by the respondent shall be subject to the final outcome of the present arbitral proceedings”*.

6. Ms. Aishwarya Bhati, learned Additional Solicitor General of India, on behalf of the petitioner argues that whether there is a valid termination of the Contract making the respondent entitled to either specific performance of the Contract or consequential benefits, cannot be left open till the final conclusion of the arbitral proceedings. Therefore, she requests that the term *“consequential action”* may be substituted by the word *“consequential damages”*.

7. **Submissions heard in detail.**

8. Essentially, the Tender was issued by the petitioner and the same was awarded to the respondent and, therefore, the Contract No. DGV/0113/OHMW/01 dated 19.12.2017 was entered into between the petitioner and the respondent for Outer Harbour Works at Rambilli (56 Kms. South-West of Visakhapatnam) for *“Project Varsha”*. Vide Termination Notice dated 06.07.2022, the said Contract was terminated by the petitioner due to failure of the respondent to proceed with the works with due expedition and without delays and several other breaches of the Contract. Consequently, the disputes arose between the parties and the Arbitral Tribunal has been constituted to determine the Claims and Counter-Claims of both the parties.



9. It is submitted that in arbitral proceedings, the respondent filed I.A. No. 2/2023 and application on behalf of the claimant along with additional affidavit dated 14.09.2023 for supplementary reliefs in the said application filed under Section 17 of the Arbitration and Conciliation Act, 1996 with the following prayers: -

“In view of the foregoing, it is humbly prayed that in addition to the prayers made in I.A. No. 2/2023 (without prejudice to the reliefs already sought in I.A. No. 2/2023), this Hon’ble Tribunal may be pleased to:

e. Restrain the Respondent from issuing a Letter of Award or executing any contract with a third party for the balance works of Project Varsha – Outer Harbour, till the final decision in the interim Applications i.e., I.A. No. 1/2023 and I.A. No. 2/2023;

f. Direct the Respondent to ensure that the third parties that are bidding, or succeeded in the bid for balance works of Project Varsha - Outer Harbour, are made aware about the pending arbitration proceedings and the claims of the Claimant and that they would not seek any equity or rights;
xxxx”

10. While, considering the said application, the Arbitral Tribunal passed the following impugned Order dated 17.09.2023 : -

“.....

6. We have heard Mr. Saurav Agrawal, Ld. Counsel for the Claimant-Applicant, and Ms. Aishwarya Bhati, Ld. Additional Solicitor General and Senior Advocate appearing for the Respondent-Employer. Having heard Ld. Counsel for the parties, it is directed that the termination of contract of the Claimant-Contractor and any consequential action taken thereof by the Respondent shall be subject to the final outcome of the present arbitral proceedings.

7. The Claimant, as undertaken by Mr. Agrawal, Ld. Counsel for the Claimant, shall remove the machinery and



equipment from the Project site without prejudice to the contentions raised in the arbitration proceedings.

8. *I.A. No. 2 of 2023 and the application for supplementary reliefs along with the additional affidavit dated 14.09.2023 stand disposed of accordingly.”*

11. It is submitted that only grievance of the petitioner is that the Contract having been terminated, the respondent can only claim damages and cannot seek specific performance of the Contract. Therefore, the impugned Order dated 17.09.2023 suffers from illegality and the “consequential action” as stated in the application, be qualified and clarified to state that the respondent is entitled only to the damages consequent to the termination of the Contract.

12. The validity of the termination of the Contract cannot be determined at the interim stage as has been rightly pointed out by the learned Senior Advocate for the respondent. Moreover, the Tender has already been awarded to another party. The specific Issue in regard to the performance of the Contract has already been framed.

13. The learned Arbitral Tribunal has rightly observed that whatever actions have been taken by the petitioner pursuant to the termination of the Contract, can be determined subject to the final outcome of the present arbitral proceedings.

14. Accordingly, there is no merit in the present petition which is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 29, 2023
S.Sharma