



O.A.Nos.143 to 145 of 2024

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Krishnan Ramasamy, J.,

These Original Applications are filed **i)** to grant an order of interim injunction, restraining the first respondent from invoking the bank guarantee provided by the applicant and issued by the third respondent for a sum of Rs.1,48,68,000/- dated 17.04.2023 and valid till 17.08.2025, **ii)** to grant an order of interim injunction restraining the respondents, their men, or any other persons claiming under them from interfering with the possession and construction of IT Building at Survey No.295/b2, 124/1b and 125/2 of Melmanavur Village and Abdullahpuram Village, Vellore Taluk and District (morefully described in the schedule of judges summons) and **iii)** to grant an interim injunction restraining the first respondent, their men from concluding and finalizing fresh bidder/contractor as per E-Tender notification Tender No.TIDEL/2023-2024/12 dated 10.02.2024 for construction of IT Office building at Survey No. (as morefully described in the schedule of Judges summons).

2. The applicant, viz., M/s.Saga Infra Solutions participated in a Tender floated by the first respondent on 29.09.2022 for construction of a Mini Tidel Park at Melmanavur and Abdullahpuram Village District and was declared as a successful bidder. Accordingly, a Letter of Intent (LOI)



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was issued by the first respondent in favour of the applicant on 21.01.2023. Thereafter, Articles of Agreement (AOA) was entered into between the parties (applicant and the first respondent) on 24.04.2023 and as per the said AOA, the applicant is supposed to complete the tender work within 10 months from the date of signing of the said AOA. Unfortunately, the applicant was not able to complete the contract work within the prescribed time limit, and hence, due to delay in executing the contract work, the first respondent after sending various communications, terminated the contract. Aggrieved by the same, the applicant has filed the present Applications seeking for aforesaid reliefs.

3. Both the learned counsel appearing for the applicant as well as the learned counsel for the first respondent argued at length and during the course of arguments, the learned counsel appearing for the first respondent has drawn the attention of the Court to the AOA entered into between the applicant and first respondent and submitted that in terms of clause 30(b) of the said AOA, the only remedy available to the applicant is to approach the Arbitral Tribunal, and therefore, requested to refer the matter before Arbitrator by appointing an Arbitrator.

4. In reply, the learned counsel for the applicant would submit that he has no objection for approaching the Arbitral Tribunal, however, he expressed his apprehension that since the first respondent has terminated



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AOA, applicant is at lurch, as the first respondent would at any point of time, invoke the bank guarantee; hence, he sought for a direction that i) till the completion of arbitration proceedings, the Court may direct the first respondent not to invoke the bank guarantee; secondly, to permit the applicant to take back all the materials and equipments, which were lying in the site, since, due to termination of contract, the applicant cannot proceed with the construction work any further and thirdly, to settle all the pending dues for the work done by the applicant. In addition to the above, the learned counsel for the applicant also sought for appointment of a Valuer to evaluate the work done so by the applicant.

5. In response to the above, the learned counsel for the first respondent assured that the first respondent would not invoke the bank guarantee till the completion of arbitration proceedings and the first respondent would settle the payment due to the applicant as per the terms of the AOA and would also permit the applicant to take back all the materials lying in the site and therefore, he fairly submitted that appropriate directions may be issued in that regard. However, he has expressed his objection to appoint any Valuer at this stage, but by the Arbitrator.

6. Heard Mr.Adinarayana Rao, learned counsel for the applicant in all applications, Mr.R.Palaniandavan, learned counsel for first respondent and Mr.N.Somasundar, learned counsel for third respondent in O.A.No.143 of 2024. Despite service of notice on the second respondent in all applications and their names being printed in the causelist, none appeared



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on their behalf.

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7. Thus, in view of the above submission made by the learned counsel for the applicant and the first respondent, as this Court, sitting under Section 11 of the Arbitration and Conciliation Act, 1996, having conferred with such power, is inclined to refer the matter before the Sole Arbitrator appointed by this Court by considering the request made by the parties and the fact in terms of clause 30 (b) of AOA, dated 24.04.2023 entered into between the applicant and the first respondent, the dispute can be sorted out through Arbitral Tribunal. Therefore, this Court passes orders appointing Sole Arbitrator to adjudicate the dispute between the parties on the following terms:-

i) Accordingly, Mr.Justice R.Pongiyappan, Former Judge, Madras High Court, at F-1, Dote Staff Quarters, Gandhi Mandapam Road, Near Birla Planetorium, Guindy, Chennai – 600 025 (Mobile No.9443643366 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties .

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.



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iii) The learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017.

iv) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondents, the applicant shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent and vice versa.

v) Since this Court has appointed an Arbitrator, it is open to the applicant as well as the respondents herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.

vi) It is made clear that, till the completion of arbitration proceedings, this Court directs first respondent not to invoke the Bank guarantee executed by the applicant in favour of the first respondent dated 17.04.2023, which is valid till 17.08.2025. However, the first respondent is directed to settle all the pending dues to the applicant as per the terms of the contract and also permit the applicant to take back all the materials from the site within a period of four



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weeks from the date of receipt of a copy of this order. As far as request made by the applicant for appointment of Valuer for evaluating the work done by the applicant is concerned, the applicant is directed to approach the Arbitrator, in which case, learned Arbitrator shall consider the same on merits. In case, the parties seeks any modification, etc., of this order, they are at liberty to approach the Learned Arbitrator seeking for such modification or any other reliefs under the provisions of Arbitration and Conciliation Act 1996.

8. This Original Application are disposed of accordingly.

03.04.2024

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Note : Issue Order copy on



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03.04.2024