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

+ **W.P.(C) 12611/2021**

**FINOLEX CABLES LIMITED**

.....Petitioner

Through: Mr. Kirat Singh Nagra, Mr. Pranav  
Vyas, Mr. Manhar Singh Saini and  
Ms. Sumedha Chadha, Advocates.

versus

**TELECOMMUNICATION CONSULTANTS OF INDIA LIMITED  
& ANR.**

.....Respondents

Through: Mr. Nicholas Choudhary and  
Ms. Pranshu Singh, Advocates for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**16.08.2024**

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**CM APPL. 47179/2024** *(seeking urgent listing of the captioned matter on  
behalf of R-1)*

1. For the grounds and reasons stated in the application, the same is allowed and the writ petition, with the consent of counsels, is taken up on board today itself.

2. The application is disposed of.

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3. The writ petition has filed seeks the following prayers:

*“(a) this Hon'ble Court be pleased to issue an appropriate writ, order or direction, calling for the records of and relating to the contract between the Petitioner and Respondent No.1,*

*(b) this Hon'ble Court be pleased to issue an appropriate writ, order or direction, quashing the Impugned Notice dated August 12, 2021,*



*(c) this Hon'ble Court be pleased to issue an appropriate writ, order or direction, directing the Respondent No. 1 to perform its remaining obligations under the Letter of Intent dated November 4, 2016 (converted into Purchase Order dated November 12, 2016), including release of the outstanding amount of Rs. 30,31,77,297 admittedly due to the Petitioner along with interest at the rate of 18% from the due date till the date of payment and to provide Form C in relation to Rs. 5,59,87,338 (as set out in Annexure P-11) or reimburse the Petitioner for all taxation liability (and litigation costs) incurred on account of absence of such Forms C;*

*(d) pending the hearing and final disposal of this Petition, this Hon'ble Court, be pleased to stay the effect, implementation, and operation of the Impugned Notice dated August 12, 2021;*

*(e) For costs of this Petition and orders thereon; and*

*(f) Pass any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondents."*

4. Subsequent to the filing of the present petition, an Arbitral Tribunal was constituted following an application under Section 11 submitted by the Petitioner, who has since filed their claims before the Tribunal. In fact, through CM. Appl. 36891/2024, the Petitioner acknowledged the ongoing arbitration proceedings. Additionally, in the same application, the Petitioner, also acknowledged, that the instant writ petition now survives only with respect to prayer (b) reproduced above.

5. Counsel for Respondent No. 1, on the other hand, urges that since the parties are in arbitration, all claims pertaining to even the remaining prayers should be adjudicated in the said proceedings.

6. It is also noted that this objection was brought to the Arbitrator's attention and has been recorded in the procedural order dated 14<sup>th</sup> September, 2023.



7. After some submissions, counsel for the Petitioner, states that he would like to withdraw the present petition and seeks liberty to raise the grievance and claim related to the impugned show cause notice dated 12<sup>th</sup> August, 2021, before the arbitral tribunal and seek appropriate relief to that effect in arbitration proceedings.

8. The Court has considered the facts and circumstances of the case. The ongoing arbitration between the parties, arises from the Letter of Intent dated 4<sup>th</sup> November, 2016 which was subsequently converted to Purchase on 12<sup>th</sup> November, 2016. The basis of the show cause notice is the “fall clause” which is part of the TCIL RFO dated 24<sup>th</sup> February, 2015. Therefore, since the parties are in arbitration, in the opinion of the Court, any question relating to the alleged excess payment as asserted in the show cause notice, should be comprehensively adjudicated in arbitration proceedings.

9. In view of the above, the Petitioner’s request for liberty to seek an appropriate relief in respect of the show cause notice dated 12<sup>th</sup> August, 2021 in arbitration proceedings is accepted. The Petitioner is permitted to raise such a claim in arbitration proceedings in accordance with law, which shall be considered by the Arbitral Tribunal in light of the observations made above. All rights and contentions of the parties with respect to the merits of the claim are left open and Court has not made any comment on the same.

10. With the above directions, the petition is disposed of.

**SANJEEV NARULA, J**

**AUGUST 16, 2024/nk**