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

+ **O.M.P.(I) (COMM.) 28/2025**

B L KASHYAP AND SONS LTD

.....Petitioner

Through: Mr. S.K. Maniktala, Mr. Udit
Maniktala, Mr. Jatin Kumar, Mr.
Kritik, Mr. Mohit Sharma, Advs.

versus

PETRONET LNG LTD & ORS.

.....Respondents

Through: Mr Anand Kumar Shrivastava, Adv;
Mr Chetan Saxena, Adv for R-1

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

13.02.2025

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1. This is a petition under Section 9 of the Arbitration & Conciliation Act filed by the Petitioner with the following prayers:-

“(a) pass an order restraining respondent No. 1 by itself or through its employees, agents, servants etc. from invoking the BGs furnished by respondent Bank on behalf of the petitioner and as detailed in para 7.6 above, and further restraining respondent Nos.2 & 3 from encashing the BGs furnished by said respondent/s to respondent No. 1 on behalf of the petitioner;

(b) appoint a Local Commissioner for the purpose of taking measurement of the (i) works done by the petitioner at the Project Sites; (ii) work-in- progress (work being executed) by the petitioner at the Project Sites; (iii) preparing inventories of the building and construction materials (including the Mechanical,



Electrical & Plumbing materials) belonging to the petitioner and lying at the Project Site; and (iv) prepare inventory of the plant & machineries, equipment etc. of the petitioner lying at the Project Sites at Office Building Complex at Dwarka, Sector-14, New Delhi;

(c) restrain the respondent by itself, its employees, agents, servants or any other person whosoever, from altering the Site by involving any third agency and/ or creating third party interests therein and/ or taking any steps whatsoever, so as to defeat and dilute the valuable rights and claims of the petitioner, in particular, till completion of recording of the entire measurements of the work done (including the work-in-progress) by the petitioner and preparation of inventories of the materials, records, machineries, equipment etc. of the petitioner lying at the Project Sites and in Site Office of the petitioner at the Project Sites;

(d) restrain the respondent by itself, its employees, agents, servants or any other person whosoever, from moving, removing, diverting, alienating and/or converting to its own use, or for any other purposes, the materials, tools, equipment, office records, furniture, computers, etc. of the petitioner lying at the Project Sites and in Site Office of the petitioner at the Project Sites;

(e) restrain the respondent by itself, its employees, agents, workers etc. whomsoever, from interfering in any manner whatsoever, with the removal by the petitioner of its (i) building and construction materials (including Mechanical, Electrical & Plumbing materials) belonging to the petitioner and lying at the Project Site; (ii) plant & machineries, equipment etc. of the petitioner lying at the Project Sites; and (iii)



entire office records, office equipment, furniture, computers and other assets of the petitioner and lying at the petitioner's Site Office within the Project Campus/ Sites;

(f) direct the respondent to furnish to the petitioner copies of all the Measurement Books (MBs) in respect of the work done by the petitioner under the Contract, in question;

(g) pass ad-interim ex-parte orders in terms of prayers (a) to (f) above, and confirm the same after notice to the respondents;

(i) award costs of the present proceedings in favour of the petitioner and against respondent No. 1;

ii) pass such other or further order or orders or such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice."

2. It is stated that disputes have arisen between the parties under the contract for construction of office building complex at Dwarka, Sector-14, New Delhi. It is stated that for adjudication of the disputes which have arisen between the parties under the very same contract prior to its termination, an Arbitral Tribunal has been constituted consisting of the following Members:-

- i. Mr. Justice Sunil Ambwani (Retd.), Presiding Arbitrator;
- ii. Mr. Justice Hon'ble Mr. Justice Talwant Singh (Retd.), Nominee Arbitrator; and
- iii. Hon'ble Mr. Justice S.K. Agnihotri (Retd.), Nominee Arbitrator



3. Learned Counsel for the Petitioner clarifies the disputes which have been referred to the Arbitral Tribunal arose prior to the termination and the disputes in the present petition have arisen between the parties post termination of the contract.
4. In order to avoid conflicting orders of two Tribunals, this Court gave a suggestion to the learned Counsel for the parties as to whether the matter can be referred to the same Arbitral Tribunal, learned Counsel for the parties accepted the said suggestion.
5. With the consent of parties, the disputes which have arisen in this petition are also referred to the very same Arbitral Tribunal.
6. Let the present petition under Section 9 of the Arbitration & Conciliation Act be taken as a petition under Section 17 of the Arbitration & Conciliation Act especially for the purpose of appointment of a Local Commissioner to look into the nature of construction which the Arbitral Tribunal will decide in accordance with law.
7. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 13, 2025

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