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

+ O.M.P. 222/2012

ASHI LIMITED

..... Petitioner

Through: Mr. Arun Kathpalia and Mr. Angad,
Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jagjit Singh and Mr. Izhar Ahamad,
Advocates for Northern Railway
Mr. A.S. Sinha, Advocate for Ministry of
Railways

+ O.M.P. 1205/2012

ASHI LTD

..... Petitioner

Through: Mr. Arun Kathpalia and Mr. Angad,
Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jagjit Singh and Mr. Izhar Ahamad,
Advocates for Northern Railways.
Mr. A.S. Sinha, Advocate for Ministry of
Railways

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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30.08.2013

O.M.P. 222/2012 & 1205/2012

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In the captioned petitions, Union of India has been sued through Chief Engineer/TSP, Northern Railway.

Mr. Kathpalia appears for the petitioner while Mr. Jagjit Singh appears for Northern Railway and Mr. A.S. Sinha appears for Ministry of Railways.

These are petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the Act). The learned counsels for the parties inform me that arbitration proceedings are already underway. The arbitration proceedings presently, are at the stage of filing of statement of claim by the petitioner.

In each of the captioned petitions, interim orders are sought qua communications issued by the respondent for withholding, recovering and / or appropriating / adjusting provisional penalty / liquidated damages of various amounts.

It is noticed that in so far as OMP No.222/2012 is concerned, the following amounts have been deducted / withheld as provisional penalty amount. These being: a sum of Rs.13,71,863.35 vide letter dated 05.12.2011 and a sum of Rs.26,87,522/- vide letter dated 22.02.2012.

In so far as OMP 1205/2012 is concerned, the amount withheld is a sum of Rs.30,75,732/-, though the threat issued to the petitioner was to withhold Rs.58,29,539.44 vide communication dated 18.12.2012.

Therefore, as against the total sum claimed of Rs.98,88,924.79 (Rs.13,71,863.35 + Rs.26,87,522/- + Rs.58,29,539.44), a sum of

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Rs. 71,35,117.35 (Rs.13,71,863.35 + Rs. 26,87,522 + Rs.30,75,732/- stands withheld.

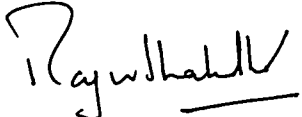
Having regard to the above, I am of the view that these petitions can be placed before the learned Arbitrator who may treat the same as applications under Section 17 of the Act and pass suitable orders with regard to the prayers made in the captioned petitions. It is ordered accordingly.

The parties will be at liberty to prefer their claims and counter claims, if any, before the learned Arbitrator, who shall decide the same in accordance with the law.

The captioned petitions are disposed of with the aforesaid observations.

Needless to say, the learned arbitrator will be free to pass any order that he deems fit in the facts and circumstances of the case after hearing both the parties.

Dasti.


RAJIV SHAKDHER, J

AUGUST 30, 2013

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