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

Date of Order: July 31, 2018

+ CONT.CAS(C) 928/2015

M/S NATCONN ENGINEERING PRIVATE LIMITED

..... Petitioner

versus

PRABHJEET SINGH & ORS

..... Respondent

+ FAO(OS) 526/2015

M/S JITF WATER INFRASTRUCTURE LTD

..... Appellant

versus

M/S NATCONN ENGINEERING PVT LTD (NEPT)

..... Respondent

Counsel for the petitioner:

Mr. Nilava Bandyopadhyay, Mr. Vijaya Singh,
Advocates in Item 5

Counsel for the respondent:

Mr. A. Mishra, Advocate for respondent No. 1.
Mr. V.K.Shukla, Advocate for respondent No. 2 –
State of MP.
Mr. Nilava Bandyopadhyay, Mr. Vijaya Singh,
Advocates in Item 4

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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S. RAVINDRA BHAT, J. (ORAL)

1. The appellant's grievance is with respect to the order of the learned Single Judge under Section 9 of the Arbitration and

Conciliation Act (hereinafter referred to as “Arbitration Act”), thereby, directing it to maintain status quo with respect to the equipment of the respondent [The contractor-M/s. Netconn Engineering Pvt. Ltd. (NEPT)], [hereinafter referred to as “NETCONN”). The order directed the appellant restraining it to appoint the new contractor and open Escrow account with IDBI Bank. After notice was issued, in the appeal, the respondent Netconn Engineering Pvt. Ltd. approached this court in Contempt Proceedings (Cont. Case No.928/2015) alleging that the learned Single Judge’s order is wilfully flouted. It is alleged that the appellant - JITF Water Infrastructure Ltd. (hereinafter referred to as JITF), had appointed another contractor, contravening the court’s order and decided not to comply with the order with respect to the ESCROW account.

2. During the course of hearing of these two matters, it transpired that an arbitration proceeding between the parties is initiated. Apparently, the appointment of the arbitrator was challenged by the NETCONN, which appears to have approached the Hon’ble Supreme Court.

3. In this appeal (FAO(OS) No. 526/2015), this court, on 17.09.2015 directed as follows: -

Issue notice, returnable on 09.10.2015.

In the meanwhile, while the appellant shall maintain status quo with respect to the respondent's equipment lying at the site, we are informed by the learned counsel for the appellant that the new contractors have already

been appointed on 25th, 28th and 30th August, 2015 prior to the impugned order which was passed on 04.09.2015. Therefore, the direction given in the impugned order with respect to the appointment of a new contractor will not be operative. Insofar as the Escrow account is concerned, the learned counsel for the appellant states that status quo will be maintained till the next date of hearing. There shall also be stay of operation of the direction contained in paragraph 9 of the impugned order. For the sake of clarity, paragraph 9 is extracted below:

"The competent officers of the parties shall remain present in Court on the next date of hearing along with all relevant documents relating to this case within their power and possession."

4. Learned counsel for the NETCONN urges that this court should take a serious view of the directions with respect to the appointment of new contractor. It is stated contrary to the submissions made in the court that the new contractor was only issued a letter of intent and no work order. It is also stated that till date, the NETCONN does not have the exact details of the fact as to what amount is maintained in the Escrow account and as to when the Escrow account was changed.

5. We are of the opinion that since the question of correctness of the termination of the contract would be the subject matter of the arbitration proceedings, for which the parties have in fact, sought recourse in accordance with the law, it would not be appropriate for this court to examine the issue whether such action by JITF was lawful. The claim in such proceedings would obviously be for compensation. In these circumstances, the directions given by the

learned Single Judge to maintain status quo vis-a-vis the contract cannot be sustained, because of section 41(e) and 14(1)(a) of the Specific Relief Act. As regards the ESCROW account, this court is of the opinion that the respondent - JITF in the contempt proceedings, should furnish these details, alongwith the compliance affidavit filed in OMP 498/2015, which is said to be pending, within two weeks.

6. With aforesaid observations, the FAO(OS) No. 526/2015 and Cont. Cas (C) 928/2015 are accordingly disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 31, 2018
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