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

+ **CS(COMM) 99/2023**

MRITUNJAY NARAYAN JHA Plaintiff
Through: **Mr. Avinash Trivedi & Mr. Rhytem Nagpal, Advocates.**

versus

M/S IRCON INTERNATIONAL LIMITED Defendant
Through: **Mr. Ankit Jain & Mr. Aditya Chauhan, Advocates.**

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

% **ORDER**
23.02.2023

I.A. 3554/2023(exemption)

The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

The application stands disposed of.

CS(COMM) 99/2023

1. The plaint be registered as a suit. Issue summons. Mr. Ankit Jain, learned counsel, appears on behalf of the defendant and waives formal service of summons.
2. Written statements may be filed within thirty days from today. The defendants shall also file affidavits of admission/denial of the documents



filed by the plaintiff, failing which the written statements shall not be taken on record.

3. The plaintiff is at liberty to file replications thereto within fifteen days after filing of the written statements. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.

4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

6. List before the Joint Registrar for marking of exhibits on 05.04.2023.

7. List before the Court on 16.05.2023.

I.A. 3552/2023 (Application on behalf of the plaintiff under Order XXXIX Rule 1 and 2 for grant of ad interim ex-parte injunction)

I.A. 3553/2023 (Application on behalf of the plaintiff under Order XXVI Rule 9 seeking appointment of local commissioner)

1. Issue notice. Mr. Ankit Jain, learned counsel, accepts notice on behalf of the defendant.

2. The disputes between the parties arise out of a contract dated 30.09.2021 for construction of buildings, railway over bridge and foot over bridge at National Mineral Development Corporation's integrated steel plant at Nagarnar near Jagdalpur in Chattisgarh ["the Contract"]. The Contract was awarded to the plaintiff pursuant to a tender issued by the defendant.



3. Although the parties are at issue as to the reasons for delay in implementation of the project, it is undisputed that the defendant terminated the Contract by letter dated 01.07.2022. In the present suit, the plaintiff challenges the validity of the termination and seeks recovery of an amount of approximately ₹9.14 crores on the various heads mentioned in the plaint.

4. I.A. 3552/2023 has been filed for an injunction against the defendant from taking any prejudicial or coercive steps in relation to the present project in any other project of the plaintiff and an injunction against the defendant recovering any money alleged to be due with regard to the Contract from any other project of the plaintiff with the defendant.

5. I.A. 3553/2023 has been filed for appointment of a local commissioner to visit the project site alongwith an expert and carry out measurement of the work done by the plaintiff as claimed in its 4th running account bill.

6. Mr. Avinash Trivedi, learned counsel for the plaintiff, submits that after the impugned termination of the Contract, the plaintiff submitted its 4th Running Account Bill for the unpaid work on the project. It is submitted that the joint measurement of the work as contemplated by the Contract has not yet been carried out as a result of which the certification of the plaintiff's claims by the defendant remains pending. In the meanwhile, the defendant has issued a communication dated 21.12.2022 to the plaintiff calling upon it to return the un-adjusted secured advance of ₹64,66,315/-, failing which the defendant has stated that it would adjust the costs of the material from the plaintiff's dues in other projects of the defendant. It is Mr. Trivedi's contention that the amount of



₹64,66,315/- claimed to be the unadjusted secured advance has already been adjusted by the plaintiff in the 4th Running Account Bill.

7. Having heard learned counsel for the parties, it appears that the first step towards resolution of the disputes is for the parties to undertake joint measurement of the work done. It is Mr. Jain's contention that the plaintiff has failed to undertake the joint measurement despite request. Be that as it may, Mr. Trivedi and Mr. Jain agree that the joint measurement will be carried out from 01.03.2023 until the measurement is completed.

8. Upon completion of the joint measurement, the defendant will verify the 4th Running Account Bill submitted by the plaintiff.

9. In the event, the defendant comes to the conclusion that the unadjusted secured advance can be adjusted from the amount due to the plaintiff under the 4th Running Account Bill, it may accept the plaintiff's position in this regard. If however, the defendant comes to the conclusion that there remains any unadjusted secured advance amount still due to the defendant, it may take such action as permitted in accordance with the other contracts between the parties.

10. I.A. 3552/2023 and I.A. 3553/2023 are disposed of in these terms, leaving it open for the plaintiff to seek such further relief as may be required after the directions contained in this order have been worked out.

PRATEEK JALAN, J

FEBRUARY 23, 2023/'pv'/