

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 10169 OF 2024

IN

COMMERCIAL (L) SUIT NO. 9293 OF 2024

Prashnath Projects Ltd ...Applicant

***IN THE MATTER BETWEEN***

Prashnath Projects Ltd ...Plaintiff

***Versus***

Indian Oil Corporation Ltd ...Defendant

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**Mr. Tahir A Siddiqui**, *appeared online, i/b Akshay R Kapadia, for the Applicant/Plaintiff.*

**Mr. Sunil Gangan**, *with Swapnil Shikhare, i/b RMC Law Associates, for the Defendant.*

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CORAM: ARIF S. DOCTOR, J

DATED: 25th June 2024

**PC:-**

1. The present Interim Application seeks the following reliefs:

*“(a) Direct the Defendant to carry out the measurement of the works done by the Plaintiff under the WO:25937810 dated 01.05.2019 at the site of the construction, i.e., Survey Nos. 26/D and 26/C of APSEZ De-notified Area, Rambili*

*Mandal, Atchutapuram, Andhra Pradesh in the presence of a local commissioner in accordance with law;*

*(b) direct the Defendant to permit the Plaintiff to take back its plant, machinery, raw materials etc. from the site of the construction, i.e., Survey Nos. 26/D and 26/C of APSEZ De-notified Area, Rambili Mandal, Atchutapuram, Andhra Pradesh in the presence of a local commissioner in accordance with law LC always prepares a report of the inventory.;*

*(c) direct the Defendant to pay the Plaintiff the certified bills of the Plaintiff to the tune of Rs.2,04,00,786.32 for which RA Bills RA-28 to RA-43-2 have been raised and certified by Defendant but not cleared;*

*(d) direct the Defendant to pay the Plaintiff the illegally recovered sum of Rs.16,03,17,554.93 recovered contrary to Government of India Guidelines under Vivad Se Vishwas-1 Notification.*

<b>Recovery Head</b>	<b>Amount (INR)</b>
Risk Purchase	5,89,25,032.96
Liquidated Damages	7,39,72,503.97
Performance Security	2,74,20,018.00
<b>Total</b>	<b>16,03,17554.93</b>

*(e) direct the Defendant to carry out the reconciliation of accounts of sum due/payable by/ to the Plaintiff as on date;*

*(e) pass an Order directing the Defendant to provide the Plaintiff the Completion Certificate in respect of the WO:25937810 dated 01.05.2019 to enable the Plaintiff qualify for future tenders.”*

2. After the matter was argued for some time, Learned Counsel appearing for the parties were agreeable that a workable order in terms of prayer clauses (a) and (b) could be passed by this Court. However, in so far as prayer clause (a) is concerned, it is agreed between the

Counsel that the measurements of the works done by the Plaintiff under the work order No. 25937810 dated 1st May 2009 has carried out by the Defendant shall be accepted by the Plaintiffs without prejudice to the Plaintiff's rights and contentions to dispute the same. However, the measurements of the works done by the Plaintiff, which were carried out by the Defendant on 24th April 2024 onwards shall made available to the Plaintiff within a period of one week from today and shall be accepted by the Defendant subject to the Defendant's rights and contentions to the disputes being kept open.

**3.** In so far as prayer clause (b) is concerned, Learned Counsel appearing on behalf of the Defendant submits that the Defendants are agreeable to permit the Plaintiff to take back its plant, machinery, raw material etc from the said site in question, namely, Survey Nos. 26/D and 26/C of APSEZ De-notified Area, Rambili Mandal, Atchutapuram, Andhra Pradesh. There was, however, some disagreement in respect of the time in which the said plant, machinery and raw material is to be removed. The Learned Counsel appearing on behalf of the Plaintiff sought three weeks time, where the Learned Counsel appearing for the Defendant submitted that in view of the fact that it was an ongoing site, a shorter period should be granted so as not to hamper of the Defendant's ongoing work.

**4.** I am given to understand the nature of the Plaintiff's plant, machinery and raw material which is lying at the said site is largely in the nature of earth moving/construction machinery etc. Hence, I see no reason for the same cannot, with the cooperation of both sides, be removed expeditiously. Hence, I pass the following order:

- (a) Parties to jointly survey the said plot and identify the plant, machinery and raw material of the Plaintiff that need to be removed;
- (b) the Plaintiff shall, within three days from today, intimate to the Defendant the names of the Plaintiff's authorised representatives who shall jointly survey the said plot with the Defendant's representatives and make a list of all the items which have be removed from the said plot. The said list shall be furnished to the Defendant within a period of two weeks from the same being made.

5. At this stage, Learned Counsel appearing on behalf of the Plaintiff informs the Court that the Plaintiff does not have nay authorised person available for two weeks, who would be in a position to go and inspect the said site. He, therefore, requests that the order take effect after two weeks from the date on which it is uploaded. I find indeed curious that the Plaintiff would have no person available to visit and inspect the items at the said site.

6. Be that as it may, I pas the following directions for removal of the Plaintiff's plant, machinery and raw material from the site:

- (a) the Plaintiff and Defendant shall jointly survey the site plot on 9th July 2024 an prepare a list of all items belonging to the Plaintiff, which have to be removed;

(b) the Plaintiff shall then indicate the Defendant what assistance is required from the Defendant's end for removal of said plant, machinery and raw material on or before 11th July 2024.

(c) the Plaintiff to commence removal of the plant, machinery and raw material from 14th July 2024 (or earlier, if possible) and complete the same on or before 26th July 2024.

7. Needless to state that given the nature and the sensitivity of the plot in question, all the necessary safeguards and protocol which are to be followed or taken by the Plaintiff in removing these materials etc from the site plot re specified as under:

*4.1 Vehicle number/ details of crane, Hydra etc. which will be used to take out the materials should be provided 1 hour before starting the activity of removal of the equipment and material.*

*4.2 Details of operators/ workers/ supervisors/ Engineers who shall be authorized by the Plaintiff for the job.*

*4.3 Plaintiff must authorize their personnel on their letterhead and have to attest their signatures as well as photographs.*

*4.4 The Plaintiff has to adhere to the safety & security measures as the terminal has already been commissioned. In other words, the Plaintiff shall not breach security protocol like conducting photography, videography, entry of unauthorized persons, hampering the normal operations of the Terminal.*

*4.5 The Plaintiff will be given 3 days' time to listing out the materials.*

*4.6 / equipments). Upon completion of material list prepared by the Plaintiff, it will arrange to take out the materials*

*/equipment from within the terminal premises in 14 working days within next 30 days. No additional time will be allowed to the Plaintiff in this regard. Entire assignment to be completed in 30 Days' time from the date of commencement of material listing by the Plaintiff,, subject to any force majeure conditions such as rain, floods etc. for which due extension will be sought by the Plaintiff and not unreasonably refused by the Defendant.*

*4.7 The Plaintiff shall be allowed to carry out the activity of removal of the equipment and material from 9 am to 5 pm on all days as stated above.*

*4.8 The Plaintiff shall intimate the Defendant the entire programme for the above activities in accordance with the above terms and conditions, well in advance preferably 7 days, in order to facilitate the same. The entire activity of removal of equipment and material shall be completed within a period 2 months from the date of the order.*

*5. The list of material/equipment being taken away from the terminal premises by the Plaintiff will be jointly signed by the authorized representatives of the Defendant and the Plaintiff. The same will be without prejudice to the rights and contentions of the parties in the pending suit.*

*6. The joint signature on the list of materials / equipments) to be taken out from Terminal premises cannot be treated as an admission of any claim of the Plaintiff for alleged shortfall/deviation in the number, quantity, weight, description of the materials/equipment lying in Terminal premises.*

*7. Further, such joint signature on the list of materials / equipments) to be taken out from Terminal premises cannot be treated as an admission of any claim of the Plaintiff for alleged deterioration in quality or condition of the materials/equipment lying at Terminal Premises, which claim, if any, shall stand on its own merits.*

*8. The joint statement or inventory is done in pursuance of the Court Order and the same shall not amount to any waiver of any contractual provisions.”*

8. Learned Counsel appearing on behalf of the Defendant is directed to file and serve an Affidavit in Reply to the Interim Application by 9th July 2024. Affidavit in Rejoinder, if any, to be filed and served by 16th July 2024.

9. List the matter on 30th July 2024.

(ARIF S. DOCTOR, J)