

(167-169)

Procedural Order No. 9
Ninth Sitting / 27-09-2014

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BEFORE JUSTICE R.C. LAHOTI (Fr. CJI)
SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION

BETWEEN

M/s HCL Infosystems Ltd.

..... Claimant

And

The Government of NCT

..... Respondent

Presence:For ClaimantMr. V.N. Koura, Advocate
Mr. S. Sirish Kumar, Advocate
Mr. Abhinav Tandon, AdvocateIn PersonMr. Malay Tandon, General Manager
Mr. Ashish Sharma, Sr. Executive, Legal
Mr. Sandeep Kanwar, CFOFor RespondentMr. Sushil Dutt Salwan, Advocate
Ms. Latika Dutta, AdvocateIn PersonMr. Vivek Mittal, Dy. Secy (I.T.), GNCTD
Mr. Santulan Chaubey, SA, Dept. of IT
Mr. S.K. Singh, Additional DCP, Delhi Police
Mr. Ashish Pankholi, Deputy Manager, TCIL
Mr. Mukesh Kumar Sinha Asst. Programmer (IT)Procedural Order No. 9

with

Record of Proceedings held on September 29, 2014(from 4.30 pm to 5.30 pm at IIC)Pleadings and Documents

On 17-09-2014, following two volumes have been received, filed by the Claimant:

- i) Claimant's reply to the Respondent's Counter Claims.
- ii) Claimant's Rejoinder to the Respondent's SoD.

Today, on behalf of the Claimant, a 'note with summary of two surveys held respectively in June-July 2014 (joint survey) and held in August-September 2014 (by HCL)' has been filed. Taken on record. This note will be taken up for consideration on the next date of hearing.

The parties have filed documents piece-meal, and some of them are by way of loose papers. Both the parties assure that within 10 days:

- i) They would either file additional compilation of documents filed loose or a fresh compilation of full set of documents so that the documents are placed in order and unnecessary and duplicate documents are excluded.
- ii) Volumes of documents filed by Claimant shall be numbered as CD-1, CD-2 and so on. Volumes filed by the Respondent shall be numbered as RD-1, RD2 and so on. Each volume will be indexed and paginated. Paging in each volume shall begin from Arabic number 1. Let the volumes be compiled by using A-5 size paper which is convenient to handle and store.

Claimant's application dt. 19-09-2014 seeking enhancement of the amount of claim:

The Claimant has sought for enhancement of the amount of claim to Rs. 27,89,71,263/- on account of subsequent events. Heard. The application is allowed and taken on record for the purpose of consideration on merits along with the SoC as originally filed. This is without prejudice to such contentions of the Respondents as they may propose to take on merits of the relief sought for by the Claimant.

The Statement of Claim filed by the Claimant shall be considered in the light of the application allowed hereby.

The Respondent seeks liberty of filing Rejoinder in the matter of Counter Claim. Mr. Salwan assures that such Rejoinder shall be filed only if necessary and if filed shall be confined to only that part of reply to CC, the pleas raised wherein call for being rejoined on the principle of 'admission and avoidance'. Let this be done in 10 days.

Within the same time both the parties shall file additional documents, if any.

Filing of the Pleadings and Documents

Filing of pleadings and documents would be completed in **10 days**. Ld. Counsel for the parties assure to make available to the tribunal an agreed **list of disputes / points for determination**.

Evidence

The Claimant and the Respondent, both propose to adduce oral evidences, two witnesses each. Recording of evidence shall be subject to the following Practice Directions:

- (i) The Examination-in-chief part of the testimony of the witnesses shall be filed by both parties by way of affidavits duly notarized on or before **15-11-2014**, subject to cross examination by the opposite side. The affidavits will not be required to be formally tendered evidence. They will be read as examination-in-chief statements without any further formality in this regard.
- (ii) The parties would do well to confine the statements on affidavits to **questions of facts** only avoiding statements on law or argumentative statements.
- (iii) The statements shall be divided in **suitable paragraphs** so as to enable a precise verification being made at the end as to which of the paragraphs are *true to the personal knowledge* of the

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deponent and which paragraphs are *based on information* received and believed to be true also disclosing the source of information.

- (iv) Although the provisions of CPC are not applicable, yet the parties are requested to keep in view the provisions of Rule 3 of Order XIX of the CPC treating the same as part of 'practice directions' made by the Tribunal.
- (v) Cross examination shall be recorded in **Question & Answer** form. The Ld. Counsel for the parties have assured to be as brief as possible in their cross-examination so as to conclude the same within the time appointed for the purpose. The formal procedure of counsel putting the entire case of his party, in the form of series of suggestions, to the witnesses of the other party and the practice of putting repeated suggestions to a witness that his answers are false, should be avoided.
- (vi) If any party feels that the witness should produce any further document/s in his custody, possession or power, advance notice in that regard shall be given. An adjournment may not be granted for this purpose.
- (vii) The witnesses shall be kept in attendance by the party tendering the affidavits in evidence for the purpose of cross examination by the opposite party.
- (viii) Any party may serve **interrogatories to the witness** and / or notice to produce documents for saving the time likely to be spent in cross examination. Such process must necessarily be completed before the cross examination on the witness begins.
- (ix) The party arranging for the venue shall also make arrangements for live recording and transcript of the evidence.

SLA

By reference to the Procedural Order No. 7 (interim directions), it is stated by both the parties that the terms of Service Level Agreement (SLA) are receiving consideration of the parties for suitable revision therein. Let this be expedited by holding such frequent meetings as required.

Next hearing

The next hearing shall take place on **26.11.2014 at 5.00 pm** for appointing dates for recording evidence and issuing further directions.

(R. C. Lahoti)
Sole Arbitrator
27-09-2014