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

+ **O.M.P. (COMM) 155/2024**

**M/S INTECH BRINECHEM LIMITED**

..... Petitioner

Through: Mr. Jagdeep Sharma, Mr. Kartikay  
Sharma & Mr. Vikas Tomar,  
Advocates.

versus

**M/S DE DIETRICH PROCESS  
SYSTEMS INDIA PVT. LTD.**

..... Respondent

Through: Mr. Neil Hildreth & Mr. Rahul  
Jain, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

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**08.04.2024**

**I.A. 7805/2024**(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**O.M.P. (COMM) 155/2024 & I.A. 7804/2024**(Stay)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], is directed against an arbitral award dated 02.02.2024, by which the learned sole Arbitrator has allowed the respondent’s counter claim to the extent of ₹4 crores and interest thereupon at the rate of 10% per annum from 24.09.2022 as well as litigation costs to the extent of ₹7 lakhs, which relate to certain proceedings in the Commercial Courts of Paris.

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2. The relevant paragraphs of the award dealing with the award of ₹4 crores are as follows:-

**“166 The Respondent had made exorbitant claims on various counts, however miserably failed to prove its entitlement. In the facts and circumstances of the case as explained hereinabove, there was no obligation on the part of the Respondent to act upon the contract at all, However, it cannot be denied that Respondent had taken some steps to execute the contract to certain extent, particularly layout plans had been accepted vide email dated 7.06.2022 (Ann R-12) and PDS of Vent Scrubber, RO Plant and CL2 Emergency Scrubber stood accepted vide email dated 11.07.2022 (Ann R-15). Thus, the Respondent cannot be rendered remediless. Even if the terms of the Contract are ignored, the Respondent is entitled to some compensation for the work executed by it.**

167. In *Construction & Design Services v. DDA*, AIR 2015 SC 1282, the Hon'ble Supreme Court held that in exceptional and given circumstances, the court may proceed on guesswork as to the quantum of compensation to be allowed.

168. "Guesstimates" are not a stranger to the law of damages - when nothing is forthcoming in terms of evidence for loss suffered - best judgment assessment for damages to be made. (See: *Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.*, (2022) 1 SCC 753)

169. In the facts and circumstances of the case, considering the amount of advance payment and the work done by the Respondent, **an amount of not more than ₹4,00,00,000 - (Rupees Four Crore Only) can be awarded.**

[Emphasis supplied.]

3. Mr. Jagdeep Sharma, learned counsel for the petitioner, submits that this award is based upon no evidence at all, and that it is expressly indicated in the paragraph 166 of the award, that it has been made ignoring the terms of the contract. He submits that the learned Arbitrator erred in applying a "guesstimate" with regard to the quantification of damages, when the respondent's counter claims had been rejected in full, and in the absence of any finding of liability against the petitioner.

4. The aforesaid contentions requires further consideration.



5. Issue notice. Mr. Neil Hildreth, learned counsel, accepts notice on behalf of the respondent.
6. Learned counsel for the parties may file any additional documents which were part of the arbitral record within two weeks from today, and may file their respective written submissions within the period of four weeks thereafter, with reference to the electronic record of the Court.
7. In the meanwhile, Mr. Sharma submits that the petitioner will furnish a bank guarantee, issued at the instance of its parent company-M/s Intech Organics Limited, for the principal amount of the award i.e. ₹4,60,88,418/- and an affidavit of undertaking that, in the event it is unsuccessful in this challenge, it will satisfy the interest component of the award as directed by the Court.
8. The enforcement of the award is stayed, subject to furnishing of a bank guarantee as aforesaid, alongwith an affidavit of the parent company, undertaking that the bank guarantee may be invoked in the event the petitioner's challenge to the award is unsuccessful. Mr. Sharma states that the parent company will also undertake in the same affidavit to make payment of the interest component of the award, as may be directed. The bank guarantee and affidavits may be filed within two weeks.
9. List on 06.09.2024.

**PRATEEK JALAN, J**

**APRIL 8, 2024**  
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