

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

% Order delivered on : 10th June, 2016

+ **OMP(I)(COMM) No.263/2016**

WeP Solutions Limited Petitioner
Through Mr.Mandeep Singh Vinaik, Adv. with
Ms. Anjali Sharma, Mr. Deepak and
Ms.Aswathy Menon, Advs.

versus

Tata Consultancy Services Ltd. Respondent
Through None

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 praying for urgent interim orders.
2. The petitioner is a company engaged in the business of offering printing solutions for large projects and has the requisite specialized skills and experience for handling large-scale projects.
3. The respondent is the successor in interest of the company which was known as CMC Ltd and was combined and amalgamated with Tata Consultancy Services Ltd, thereby merging to form one legal entity. By virtue of the said amalgamation, all contractual rights and obligations of CMC Ltd are now vested in and binding on the present respondent. This amalgamation was sanctioned and permitted by the Bombay High Court in

Company Scheme Petition No. 421/2015, vide order dated 14th August 2015. The respondent company has expertise in Information Technology ("IT") and IT enabled services, and has been commissioned by the Government of India for establishing and running Passport Seva Kendras, who has in establishing these Kendras outsourced some of the services.

4. By virtue of agreement dated 20th November, 2009, the services and expertise of the petitioner Company (at that time "WeP Solutions India Limited") was contracted for providing printing solutions at various Passport Seva Kendras across the country by the respondent. The terms and conditions of this transaction were set out in agreement dated 20th November, 2009. The agreement is for a term of 8 years, and it was stipulated that it would not be terminable within the span of those 8 years to protect the interests of both the parties.

5. The petitioner has reproduced the terms and conditions of this agreement, including the term which relate to the termination of the same. The same reads as under: -

3. Terms and Conditions for P1 four (4) years of the Agreement:

d. CMC will not engage any other service provider for managed printing services at PSK 's for Passport Seva Project. However, in case of exigency, CMC may repair/resolve the printer on its own.

4. **Terms & Conditions for Last four (4) years of the Contract.**

d. *CMC will not engage any other service provider for managed printing services at PSK 's for Passport Seva Project, however, in case of any exigency, CMC may repair /resolve the printer on its own.*

8. Termination

a. *CMC has the option of terminating the contract if mutually agreed upon performance clauses are not met by Wepsol for*

Three consecutive months. In case of non performance, CMC will give 1 (one) month advance termination notice for curing the breach/non performance to Wepsol. In case Wepsol fails to cure the breach within one month, CMC will have the right to terminate the Agreement on account of non performance of Wepsol.

- b. Wepsol can also terminate the contract due to the non-payment issues pending for a continuous period of Three months during the term of the contract by giving 3 (Three) months advance written notice. Once the termination notice is served to CMC, the due payment should be cleared within Seven days of the date of notice, else the contract will be terminated. Due to any reason other than Non-performance or Non-payment, the contract cannot be terminated by either of the parties.*
- d. In case either of the Parties commits a material breach of any of the terms and conditions of this Agreement, the other Party shall give the defaulting Party, a Notice to remedy such breach within a period of Fifteen (15) days from the date of such material breach of terms and conditions. The Defaulting Party should remedy the material breach within 15 days of receipt of such Notice from the Other Party. If the defaulting Party fails to remedy such breach within the said stipulated period of Fifteen (15) days, then the Other Party may terminate this Agreement by giving a notice of 10 days.*
- e. Either Party is free at will to terminate this Agreement by giving thirty (30) days written notice of Termination to the Other Party in case of bankruptcy or insolvency or liquidation of the Other Party.*
- f. In case of termination, CMC will pay 50% of the last month invoice as winding down charges or CMC will return all the cartridges back to Wepsol on the last day of termination notice. Wepsol will not provide cartridges for new calls during the termination period. In case CMC decides to return cartridges, Wepsol will provide empty cartridges back to CMC.*
- g. The foregoing provides for the entire liability of CMC and the exclusive remedy of Wepsol in the event of termination on this Agreement.*

In the event of termination, all equipments belonging to Wepsol will be returned back to Wepsol and any documentation required for Wepsol to carry back the same to be provided by CMC or the rightful authority.

z. In the last 4 years, if CMC terminates the contract, CMC may buy back all the printers on AS IS, WHERE IS basis at the mutually agreed price of the printers.

6. On 18th January 2011, the Printing Solutions Division of WeP Solutions India Limited, i.e., the company entered into the agreement with the respondent, demerged into Datanet Systems Limited (which was formerly known as "Datanet Corporation Limited") by virtue of approval of Scheme of Arrangement by the High Court of Karnataka in Company Petitions No. 250 & 251 of 2010 vide its order dated 18th January 2011. Thereafter, on 23rd December 2011, the name, Datanet Systems Limited, was changed to WeP Solutions Limited, i.e. the name of the petitioner herein.

7. It is the case of petitioner that the respondent on 12th May, 2016 without any justification issued a notice of termination of agreement. The submission of the petitioner is that termination of agreement is arbitrary and without cause, thereby violating the terms and conditions of the original agreement dated 20th November, 2009. The petitioner replied to the notice on 23rd May, 2016 setting out its stand and opposing the said termination.

8. Counsel says that as no response was received from the respondent after termination notice and it was assumed that the respondent is not even interested in a conciliation process by which the dispute between the parties arising directly from the issuance of the termination notice can be resolved amicably. The petitioner took the steps to suggest the name of neutral person as sole Arbitrator in terms of clause 17 of the agreement. Counsel has referred the decision of Supreme Court in the case of *Adhunik Steels Ltd. v. Orissa*

Manganese and Minerals (P) Ltd., (2007) 7 SCC 125 in support of his submissions.

9. Counsel submits that as the termination of agreement is a wrongful act which has led to undue hardship and damages suffered by the petitioner, the order of termination be stayed till the disputes between the parties is settled.

10. The agreement has been terminated on 12th May, 2016. The petitioner is claiming damages who has also invoked the arbitration. The present petition is filed on 8th June, 2016. The petitioner is seeking the relief for revival of termination. At present, the Court is not aware about the latest position as to whether the respondent has entered into any new agreement with third party or not. Thus, the ex-parte relief cannot be granted.

11. Let the notice be issued to the respondent through all modes including registered post and approved courier, on filing of process fee and Regd. A.D. Covers within a week, returnable on for 17th June, 2016. The petitioner will file an affidavit of service along with tracking report about the service of the respondent on the next date. Dasti in addition.

12. Copy of the order be given *dasti* to the learned counsel for the petitioner, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

JUNE 10, 2016