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

+ **FAO(OS) 136/2015**

**FAIRWOOD HOLDINGS PVT LTD (FORMERLY
FAIRWOOD CONSULTANTS P LTD)** Appellant

Represented by: Mr.Rakesh Tiku, Sr.Adv.
instructed by Mr.Kamal
Nijawan, Mr.Sonal Kumar
Singh, Mr.Arush Pathania,
Advs.

versus

**GUJARAT INTERNATIONAL
FINANCE TEC-CITY CO LTD** Respondent

Represented by: Mr.Sayid Marzook, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **11.03.2016**

1. Heard learned counsel for the parties. The appellant : Fairwood Holdings Pvt.Ltd. filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, inter-alia, raising an issue concerning confidentiality in the drawings.
2. The appellant was to render services. The drawings in respect whereof confidentiality was claimed concerned said contract under which the appellant was to provide services to the respondent.
3. Taking cognizance of the petition filed by the appellant, on September 12, 2013, while issuing notice to the respondent the learned Single Judge passed an interim order to the effect that in case drawings and confidential information are parted with, they would be subject to the outcome of the

petition filed by the appellant.

4. On the issue of jurisdiction in Delhi, learned Single Judge noted in the order dated September 12, 2013 that the contract was executed in Mumbai and the work in respect whereof work to be provided as per the contract was in Gujarat. The arbitration clause in the agreement provided for the venue at Ahmedabad, by which we understand the learned Single Judge meant the seat of the arbitration. The learned Single Judge noted that payments under the agreement were received by the appellant in Delhi.

5. Vide impugned order dated January 14, 2015, the successor Bench has disposed of the petition noting that in terms of the arbitration clause the Arbitral Tribunal has been constituted. Learned Single Judge has observed that either party can take recourse to remedy under Section 17 of the Arbitration and Conciliation Act, 1996. Learned Single Judge has noted that the issue of jurisdiction could be decided at the appropriate stage, which we understand would mean when, if aggrieved by the final award, a party intends to take recourse to Section 34 of the Arbitration and Conciliation Act 1996. The learned Single Judge has observed that issue concerning confidentiality in the information contained in the drawings parted with would be subject to the outcome of the arbitral proceedings and parties could file an application under Section 17 before the Arbitral Tribunal.

6. Learned senior counsel for the appellant states that if the appeal is disposed of with two observations no other issue would be argued. The first being that the interim order as reflected in paragraph 7 of the impugned order be restricted to sans the right to file an application under Section 17 of the Arbitration and Conciliation Act 1996. Second it be clarified that the issue of jurisdiction would be decided, if need be, by the Court taking

cognizance of the objections filed under Section 34 of the Arbitration and Conciliation Act, uninfluenced by any observation made either in the order dated September 12, 2013 or the order dated January 14, 2015.

7. Learned counsel for the respondent states that he has no objection if the appeal is disposed of as suggested by learned senior counsel for the appellant.

8. Ordered accordingly.

9. At this stage we are informed that the respondent has taken recourse to a remedy under Section 9 of the Arbitration and Conciliation Act 1996 before a Civil Court in Ahmedabad praying for a direction to the appellant to furnish security. We therefore clarify, issue of jurisdiction could also be decided in said proceedings under Section 9 of the Arbitration and Conciliation Act 1996 initiated by the respondent.

10. The appeal is disposed of directing that the issue of confidentiality in the drawings parted with by the appellants to the respondent would be subject to the outcome of the arbitral proceedings and issue of jurisdiction is kept open, to be decided by the Court seized of the application filed by the respondent under Section 9 of the Arbitration and Conciliation Act 1996 or if challenge is made to the award to be pronounced by the Arbitral Tribunal.

11. No cost.

CM 5415/2015 (stay)

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

A.K. PATHAK, J.

MARCH 11, 2016 /‘ga’