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

+ **O.M.P.(I) (COMM.) 161/2016**

WINNERCONSTRUCTIONS PVT .LTD Petitioner
Through: Mr. Dev P Bhardwaj, CGSC with
Mr. Surender Kumar, Advocate
versus

UOI CENTRAL PUBLIC WORKS DEPARTMENT
& ANR. Respondents
Through: Mr. Jaswinder Singh, Advocate
Mr. Ankur Mahindra, Advocate

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **09.12.2016**

1. The present petition is filed under Section 9 of the Act seeks to restrain the Respondents from invoking and encashing three bank guarantees (BGs) dated 2nd December, 2010 for a sum of Rs. 40,62,660/-, dated 27th October, 2015 for a sum of Rs. 6,72,460/-, and dated 17th July, 2013 for a sum of Rs. 17,10,090/-.

2. By an interim order dated 29th April 2016 the Court directed that " till the next date of hearing, the operation of the invocation of the bank guarantees shall remain stayed and the respondent No. 1 shall not receive any payment from the respondent No.2 under the said bank guarantees, if already not received."

3. This Court has heard the submissions of learned counsel for the parties.

4. The main grievance of the Petitioner is that despite extending the time for performance of the obligations under the agreement dated 9th December, 2016 for construction of school building and 17 staff quarters

for the Kendriya Vidhyalaya (KVS), the Respondent arbitrarily terminated the contract by a communication dated 26th April, 2016 without waiting for the expiry of the extended period.

5. The Court is of the view that the grievance of the Petitioner regarding wrongful termination of the contract can be examined in the arbitration proceedings. As regards making out a case for stay of encashment of the three BGs, the Petitioner has to show that there exists a fraud that vitiates the contract underlying the BGs or that such encashment will cause irretrievable injustice to the Petitioner or that some special equities exist in its favour.

6. The Court is not satisfied that any of the above three requirements stand fulfilled in the present case. Consequently, the Court is not persuaded to continue the interim order dated 29th April, 2016 and it is hereby vacated. This will not preclude either p[arty from seeking other appropriate interim reliefs in the arbitral proceedings in accordance with law.

7. It is further clarified that this order is passed on the basis of the existing pleadings and documents, and will not influence the final determination in the arbitral proceedings. The petition is dismissed.

8. *Dasti.*

S.MURALIDHAR, J

DECEMBER 09, 2016
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