

\$~19

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

+ FAO(OS)(COMM)No.31/2016 & CM Nos.18772-74/2016

Date of decision : 16th May, 2016

M/S GANGOTRI ENTERPRISES LTD. – M/S D.P.

CHOPRA – JV

..... Appellant

**Through : Mr. Subhiksh Vasudev, Adv.
along with Mr. Anupam
Vashistha, AR of the
appellant.**

versus

THE DY CHIEF ENGINEER/CONST.

..... Respondent

**Through : Mr. Jagjit Singh and Mr.
Preet Singh, Advs.**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. By way of the instant appeal, the appellant has assailed the order dated 12th May, 2016 whereby OMP(I)(COMM.)No.176/2016 has been disposed of. This petition was filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 praying for an injunction against the respondent from encashing the following three bank guarantees :

- (a) BG No.120127IBGA00020 dated 17.02.2012 and valid till 31.05.2016 and issued by IDBI Bank Limited, New Delhi towards mobilization advance.
- (b) BG No.16090100000529 dated 04.01.2013 issued by Axis Bank Limited, New Delhi and valid till 31.05.2016 towards mobilization advance.
- (c) BG No.00070100006200 dated 22.03.2011 issued by Axis Bank Limited, New Delhi and valid till 31.05.2016 towards performance security.

2. The impugned order dated 12th May, 2016 notes that a statement was made by Mr. Jagjit Singh, learned counsel for the respondents, on instructions from Mr. Rakesh Yadav, Dy. Chief Engineer, (Construction) that the respondents have no intention to encash the Bank Guarantees at Sr.Nos.(b) and (c) above. This statement was taken on record.

3. So far as the third bank guarantee dated 17th February, 2012 is concerned, we are informed today by Mr. Jagjit Singh, learned counsel for the respondents that after passing of the impugned order, the respondents have received the amount of bank guarantee by means of a demand draft no.DD022818 dated 11th May, 2016. In view thereof, the appeal challenging the refusal of the interim relief prayed by the appellant qua this bank guarantee is rendered infructuous.

4. It is submitted by Mr. Subhiksh Vasudev, learned counsel for the appellant that so far as the remaining two bank guarantees are concerned, in view of the submission made by learned counsel

for the respondents to the effect that the bank guarantees were not being encashed, interest of justice require that the appellant be given reasonable notice, in case the respondents propose to encash the bank guarantees. The same appears to be a fair request.

5. In view thereof, it is directed that in case the respondents propose to encash the bank guarantees at Sr.Nos.(b) and (c) of para no.1 above, they shall give seven days notice indicating the respondent's intention to encash the same.

This appeal and applications are disposed of in the above terms.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

MAY 16, 2016

aj