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

+ O.M.P.(I) 215/2015

UNITECH DEVELOPERS & PROJECTS LIMITED

..... Petitioner

Through Mr.Amit Sibal, Sr. Adv. with
Mr.Rajat Jariwal and Mr.Aakash
Bajaj, Advs.

versus

ATEN CAPITAL PRIVATE LIMITED

..... Respondent

Through Mr.Rajat Navet, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

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23.08.2016

On 20th May, 2015, the following order was passed:

“1. The matter was listed yesterday when Mr.Rajat Navet, learned counsel for the respondent sought time to take instructions from his client. He states that his client is out of country and would require some more time to take instructions and file reply.

2. He submits, interest upto March, 31, 2014 has been paid to the petitioner. He also fairly submits that pending filing of reply by the respondent, the respondent shall furnish a bank guarantee of Rs.3 Crores with up-to-date interest calculated as per the agreement with effect from April 1, 2014, in favour of the Registrar General of this Court.

3. Let the same be done within three weeks from today.

4. It is made clear, furnishing of the bank guarantee is without

prejudice to the rights and contentions of the parties.

5. The reply shall be filed by the respondent within four weeks from today. Rejoinder thereto within two weeks thereafter.”

Four weeks’ time was granted to the respondent to file the reply. On 30th November, 2015 while accepting the bank guarantee, learned Registrar General passed the order that the said interim order will continue till the disposal of the petition and the respondent shall extend the bank guarantee. The reply has been filed in the month of April, 2016. I have been informed by learned counsel for both the parties that arbitration proceeding is at the stage of completion of pleadings. The next date of hearing before the Arbitrator is 5th October, 2016.

Under Section 9(3) of Arbitration and Conciliation Act, 1996, it is mandatory that once the Arbitral Tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

Admittedly, in the present case, the said efficacious remedy under Section 17 of the Act is permissible as the arbitration proceeding is continuing between the parties.

Under these circumstances, the present petition is disposed of with the direction that the statement made on 20th May, 2015 will continue. Respondent has to keep the bank guarantee alive unless the said order is modified/vacated by the Arbitral Tribunal. Liberty is granted to the respondent to move an application under Section 17 of Arbitration and Conciliation Act, 1996 for modification/vacation of the said interim order

before the Arbitrator, if so desired.

Counsel for the respondent submits that the respondent's application for releasing of the bank guarantee may be considered by the Arbitral Tribunal. The respondent to request the learned Arbitrator who will decide the said application as per its own merit.

AUGUST 23, 2016/jk

MANMOHAN SINGH, J.