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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 400/2016

**BOUGAINVILLEA MULTIPLEX & ENTERTAINMENT
CENTER PVT. LTD**

..... Petitioner

Through: Mr. Akhil Sibbal with Mr. Ashutosh
Khaitan, Mr. N.S. Ahluwalia and Mr. Deepak
Chawla, Advocates.

versus

**INDIA TOURISM DEVELOPMENT CORPORATION
LIMITED**

..... Respondent

Through: Mr. Ravi Sikri, Senior Advocate with Ms.
Shweta Bharti, Ms. Neelesh Sinha, Mr. Shijo
George, Ms. Rashmi Gupta and Mr. Dipank Yadav,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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07.10.2016

IA No. 12599/2016 (for exemption)

1. Exemption allowed subject to all just exceptions.

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2. This is a petition filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking interim relief of stay of the bank guarantee ('BG') furnished by the Petitioner in favour of the Respondent.

3. In an earlier petition, OMP (I) (Comm) 376 of 2016, under Section 9 of the Act, this Court in its order dated 4th October, 2016 noted that "an inventory has been taken of the movable properties of the Petitioner lying in the premises"

which was given on licence by the Respondent to the Petitioner. In those proceedings, the Respondent had prayed that the Petitioner should “make a deposit of some amount in the Court or furnish a bank guarantee for the immovable properties being handed over to it.” Such plea was resisted by the Petitioner by pointing out that the Respondent already had with it security in the sum of about Rs. 2.5 crores which would be sufficient to secure the interests of the Respondent.

4. Today, Mr. Ravi Sikri, learned Senior counsel appearing for the Respondent states that the aforementioned sum of Rs. 2.5 crores includes Rs. 1.25 crores in cash and the balance by way of BG the encashment of which is sought to be resisted by the Petitioner in the present petition. The only condition for invocation of the BG being the breach of the terms of the licence by the Petitioner, and with the Respondent having cited such breach in its invocation letter, there is no case made out for stay of encashment of the BG.

5. Learned counsel for the Petitioner urges that since there are genuine disputes between the parties, the Respondent should be permitted to keep the BG alive during the pendency of the arbitral proceedings. The Court is not inclined to grant such relief in view of the settled legal position regarding stay of invocation or encashment of the BG.

6. The petition is accordingly dismissed.

S.MURALIDHAR, J

OCTOBER 07, 2016/Rm

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