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

+ **FAO(OS) (COMM) 139/2016**

WINNER CONSTRUCTIONS PRIVATE LIMITED Petitioner
Represented by: Mr.Deepak Kumar Naag,
Mr.Ankur Mahindroo and
Mr.Sneashish Mukherjee,
Advs.

versus

UNION OF INDIA & ANR. Respondents
Represented by: Mr.Jaswinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **14.12.2016**

CM No.46183/2016

Exemption is allowed subject to all just exceptions.

FAO(OS) (COMM) 139/2016

1. A petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been dismissed by the learned Single Judge vide impugned order December 09, 2016. Invocation of three bank guarantees, dated December 02, 2010, October 27, 2015 and July 17, 2013 was prayed for.
2. The petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 does not plead that three bank guarantees were issued for different purposes. It is simply pleaded that bank guarantees totalling `64,45,210/- are the subject matter of the petition.

3. The petition does not disclose that one bank guarantee is in sum of `40,62,660/-. The second is in sum of `6,72,460/-. The third is in sum of `17,10,090/-. The petition also does not disclose that the first bank guarantee in sum of `40,62,660/- is a performance guarantee. The other two guarantees are towards security deposit.
4. We have perused the three bank guarantees. They are payable on demand without demur.
5. It is settled law that invocation of a bank guarantee can be interdicted by a court if fraud of an egregious nature or irretrievable injustice of the kind which was contemplated in the decision reported as (1988) 1 SCC 174 *U.P.Co-Operative Federation Ltd. vs. Singh Consultants & Engineers (P) Ltd.*
6. We have perused the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996. Invocation of the bank guarantees is pleaded to be illegal, fraudulent and with dishonest intention and with ulterior motive. Irretrievable injustice is not a ground.
7. On what facts fraud of an egregious nature was sought to be pleaded are missing. The sum total of the pleadings would be that admitting the construction work not to be pleaded within the time contemplated by the contract which we note was December 15, 2011, facts are pleaded as to why delay took place. There is a reference to a show cause notice served as to why the contract be not terminated and liquidated damages be not levied.
8. These issues would not relate to fraud of an egregious nature being pleaded.
9. It is further pleaded that on March 15, 2016, reserving the right to levy liquidated damages, date of completion was extended to June 30, 2016.

It is pleaded that the contract was terminated on April 26, 2016 and bank guarantees were sought to be levied. The argument would be that the termination is illegal for the reason, extending time to complete the contract being June 30, 2016, the termination prior thereto and invocation of the bank guarantees is fraudulent.

10. This plea also falls short of a plea of fraud being of an egregious nature in invoking the bank guarantees.

11. We find no merit in the appeal.

12. Dismissed.

13. No costs.

CM No.46182/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

DECEMBER 14, 2016

VLD