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

+ O.M.P.(I) 438/2015

SUPREME ROAD TRANSPORT PVT. LTD Petitioner
Through Mr.Ashish Mohan, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr.Jagjit Singh, Adv. with Ms.Shipra
Shukla and Mr.Preet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **02.08.2016**

The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996. The following order was passed on 19th August, 2015:

“Issue notice. Learned counsel for the respondent accepts notice and submits that though the petitioner is in breach, the respondents have not yet taken a decision to invoke the bank guarantee. Let the reply to the petition be filed within two weeks. Rejoinder, if any, be filed within two weeks thereafter.

List on 8th December, 2015.

In the event of the respondents taking a decision to invoke the bank guarantee, the respondents shall inform this Court. The petitioner shall however keep the bank guarantee alive till further order.”

Learned counsel for the respondents states that in fact, the respondents as of today have not taken any decision to invoke the bank guarantee. By order dated 25th January, 2016, time was granted to the respondents to file

the reply subject to cost of Rs.15,000/-. Reply could not be taken on record as the respondents were pressing for waiver of the cost. Though, rejoinder has been filed by the petitioner.

The reply filed by the respondents is not taken on record, as the cost was imposed upon the respondents, which was not paid. After small submissions of the parties and as agreed by the petitioner, the following directions are passed:-

- (i) As agreed by the learned counsel for the respondents, the respondents will constitute the Arbitral Tribunal within the period of 30 days from today and in failure to do so, the Court will appoint the sole Arbitrator to decide the disputes between the parties.
- (ii) Learned counsel for the petitioner has made the statement that so far the respondents have not taken any steps to invoke the Bank Guarantee in question. Under these circumstances, the statement made on behalf of the respondents on 19th August, 2015 shall continue during the pendency of the arbitration proceedings unless the said order is modified or vacated by the Arbitral Tribunal. Liberty is also granted to the respondents to move an application before the Arbitral Tribunal under Section 17 of the Act, if so required. The petitioner is directed to keep the Bank Guarantee alive during the pendency of the arbitration proceedings.

The petition is accordingly disposed of.

MANMOHAN SINGH, J.

AUGUST 02, 2016/jk