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

+ **FAO(OS) 656/2015**

GAIL (INDIA) LTD

..... Appellant

Represented by: Mr.Sanjay Jain, ASG instructed
by Mr.Prashanto C Sen,
Mr.Shivanshu and Ms.Natasha
Thakur, Advocates.

versus

PRISM CEMENT LIMITED

..... Respondent

Represented by: Mr.Sudhir K.Makkar and
Ms.Meenakshi Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

18.01.2016

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1. OMP (I) No.520/2015 filed by respondent under Section 9 of the Arbitration and Conciliation Act, 1996, praying that pending adjudication of the dispute before the Arbitral Tribunal the appellant be restrained from invoking the letter of credit came up for admission before the learned Single Judge on September 15, 2015.

2. Recording tentative reasons, as they are excepted to be when an ad-interim injunction is being granted (in contra distinction to an interim injunction which is decided with full reasons after hearing the parties) the learned Single Judge recorded reasons, (prima-facie of course) as to why till the next date of hearing the debt notes issued by the appellant be not recovered i.e. restrained the invocation of the letter of credit. The next date of hearing

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fixed by the learned Single Judge is February 18, 2016.

3. Since the impugned order is an ad-interim order and is not an interim order after hearing the parties post completion of the pleadings we are of the opinion that the remedy of the appellant was to either file an application under Order 39 Rule 4 of Code of Civil Procedure praying for the order in question to be vacated or to have prayed to the learned Single Judge for date to be preponed.

4. In matters of commerce, taking cognizance of a proceeding praying for an interim measure pending adjudication of the dispute before the Arbitral Tribunal on September 15, 2015 the learned Single Judge listed the matter for consideration after five months. This long date may not be warranted. The date of February 18, 2016 was too distant in the future.

5. Under the circumstances, without commenting upon the ad-interim order and leaving all objections taken by the appellant open, we dispose of the appeal preponing the date of OMP (I) No.520/2015 for which we have the respondent's consent. The date of February 18, 2016 is cancelled.

6. OMP (I) No.520/2015 would be listed before the Roster Bench on February 01, 2016.

7. The learned Single Judge would hear arguments in the OMP, provided the appellant has completed the pleadings by way of filing reply to the same and the reply being on record.

8. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 18, 2016/‘vn’

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