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

+ ARB.P. 62/2017

ZEECO INC Petitioner

Through Mr.Sandeep Sethi, Sr. Adv. with
Ms.Ruchika Sindhwani and Mr.Anish Ghoshal,
Advs.

versus

FERNAS CONSTRUCTION INDIA PVT LTD Respondent

Through Mr.K.C.Dubey and Mr.Rajeev
Sharma, Advs.

+ O.M.P.(I) (COMM.) 429/2016

ZEECO INC. Petitioner

Through Mr.Sandeep Sethi, Sr. Adv. with
Ms.Ruchika Sindhwani and Mr.Anish Ghoshal,
Advs.

versus

FERNAS CONSTRUCTION INDIA PRIVATE
LIMITED ... Respondent

Through Mr.K.C.Dubey and Mr.Rajeev
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
24.04.2017

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ARB.P. 62/2017

This petition is filed under section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate upon and decide all the disputes arising out of purchase order dated 4.7.2012. The respondent is said to have placed two purchase orders dated 4.7.2012 on the petitioner for supply of a flare system offsite and utilities project of Opal- Dahej Gujarat. The respondent also placed a work order dated 4.7.2012 for Erection, Testing, Pre-Commissioning, Commissioning of flare systems in Dahej Gujarat.

As per General Terms and Conditions of purchase, six performance bank guarantees were issued by J.P.Morgan Chase Bank, N.A.Mumbai branch in favour of the respondent on behalf of the petitioner. Two were performance bank guarantees and four were advance bank guarantees. The Bank Guarantees were encashed. As per the petitioner no reasons have been assigned by the respondents. Hence, the petitioner served upon the respondent a notice invoking the arbitration clause on 4.12.2016. As there has been no response from the respondent the present petition has been filed.

Learned counsel appearing for the respondents submits that he has no objection in case the matter is referred to the Delhi International Arbitration Centre for Arbitration.

Accordingly, the dispute between the parties is referred for arbitration to the Delhi International Arbitration Centre. The Centre will appoint an arbitrator as per its applicable rules/instructions.

Petition stands disposed of.

Parties to appear before the Delhi High Court International Arbitration Centre on 8.5.2017.

O.M.P.(I) (COMM.) 429/2016

This is a petition filed under section 9 of the Arbitration and Conciliation Act, 1996 seeking to restrain the respondent, its directors etc. from disposing off or dealing in any manner with all their assets and bank accounts within or outside India. As noted above, the dispute exists between the parties regarding the purchase orders and encashment of the six bank guarantees which were issued by the petitioner. When the matter first came up for hearing before this court on 3.11.2016 this court had restrained the respondent from alienating, transferring or disposing of any of its assets including monies in its bank accounts in excess of Rs.12 crores. Hence, in other words, the respondent was to ensure minimum balance of Rs.12 crores in his account till the next date of hearing. The above interim order has continued till date.

Learned counsel appearing for the respondent has vehemently opposed continuance of the said order. He submits that the respondent company has sufficient liquidity to meet the eventuality of an adverse award and that the restraint order is needlessly obstructing its functioning as the bank is not honouring its cheques.

As noted above, in Arb.P.62/2017 this court had already referred the matter to the Arbitration Centre. Accordingly, liberty is granted to the petitioner to press for the present relief before the learned Arbitrator under Section 17 of the Act. In case the petitioner files the said application under section 17 before the Arbitrator within one month from today the said interim order shall continue to operate till disposal of the application under

section 17 by the learned Arbitrator. Further even prior to disposal of the application the learned Arbitrator would be free to amend, modify, vary or revoke the said interim order, as per law.

Present petition stands disposed of.

Parties to appear before the Delhi High Court International Arbitration Centre on 8.5.2017.

JAYANT NATH, J

APRIL 24, 2017

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