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

+ O.M.P.(I) (COMM.) 71/2017

IPEX INFRASTRUCTURE(P) LTD Petitioner

Through: Mr Sachin Sood, Advocate.

versus

HINDUSTAN CONSTRUCTION COMPANY LTD.
& ANR.

..... Respondents

Through: Mr Dayan Krishnan, Senior Advocate
with Ms Malavika Lal and Ms
Aakashi Lodha, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.02.2017**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying as under:-

“A. Restrain the operation and steps initiated out of Letter dated 16.01.2017 threatening encashment of the Bank Guarantee being bank guarantee No. 6021IPEBG150021 dated 26.02.2015 extended vide extension dated 18.02.2016 and 15.09.2016 (Under Protest) for an amount of Rs 25,00,000/-. The aforesaid extended bank guarantee is valid till 28.02.2017 with a claim period of 2 months thereafter.”

2. Mr Dayan Krishnan, learned senior counsel appearing for the respondents states that respondent No. 1 is not seeking to encash the bank guarantee in question (Bank Guarantee No. 6021IPEBG150021 dated 26.02.2015) and the said respondent only seeks that the bank guarantee be extended. The learned counsel for the petitioner has no objection for

extension of the bank guarantee subject to the parties commencing proceedings for resolution of their disputes.

3. Although, the learned counsel state that they have no objection if the parties are referred to the Delhi International Arbitration Centre (DIAC) for resolution of the disputes; they, however, state that the parties are endeavouring to resolve the disputes amicably and would like to resort to arbitration if their efforts for an amicable resolution fail.

4. In view of the above, it is directed that respondent No.1 shall not invoke the bank guarantee in question (Bank Guarantee No. 6021IPEBG150021 dated 26.02.2015). However, this is subject to the petitioner keeping the bank guarantee alive till the resolution of the disputes or till appropriate orders are passed by the Arbitrator.

5. It is further directed that a sole arbitrator be appointed under the Rules of DIAC. The parties shall appear before the Co-ordinator, DIAC on 17.05.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

6. In the meantime, the parties shall endeavour to amicably resolve the disputes within a period of eight weeks from today.

7. No steps will be taken for constitution of the Arbitral Tribunal till the parties have exhausted their efforts to resolve the disputes within the specified period as indicated above.

8. It is clarified that in the event the parties are able to resolve to resolve the disputes, no further steps for adjudication of the disputes by arbitration

are required to be taken and the parties shall communicate the same to the Co-ordinator, DIAC. However, if the parties are unable to resolve the disputes on or before 16.05.2017 the parties shall appear before the Coordinator DIAC as directed and proceed for adjudication of the disputes by arbitration as directed.

9. It is clarified that the present order is being passed with the consent of the parties in the peculiar facts and circumstances of the case.

10. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 28, 2017
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