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

+ O.M.P.(I) (COMM.) 230/2016 and I.A. 9668/2016

JMC PROJECTS (INDIA) LTD.

..... Petitioner

Through: Mr Dayan Krishnan, Senior Advocate
with Mr Arshdeep Singh, Mr
Tanmaya Mehta, Mr Manish Jha and
Mr Manu Sahni, Advocates.

Versus

M/ S INDURE (P) LIMITED & ORS.

..... Respondents

Through: Mr Tarun Tiwari and Ms Shaheen,
Advocates for R-2/NTPC.
Mr O.P. Gaggar and Mr Runashree
Saikia, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

04.01.2017

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

"a) Direct the Respondent No.1 to deposit a sum of Rs. 4,75,15,335/- (3,33,10,498/- amount due towards certified bills along with interest of Rs. 90,70,997/- upto 05.05.2016 and retention money of Rs. 51,33,840/-) with this Hon'ble Court and direct that the said amount shall remain deposited during the pendency of the arbitral proceedings;

b) Restrain the Respondent No. 1 their servants, officers or legal representatives from invoking the Performance Bank

Guarantee of Rs. 45,00,000/-, bearing number 50350IGL0009712 dated 28.11.2012, lastly extended on 05.03.2016, having validity upto 27.06.2016 and claim period upto 27.12.2016;

c) Restrain the Respondent No. 3, their servants, officers or legal representatives from encashing the Performance Bank Guarantee bearing number 50350IGL0009712 dated 28.11.2012 of Rs. 2,40,00,000/- dated 24.03.2015, lastly extended on 05.03.2016, having validity upto 27.06.2016 and claim period upto 27.12.2016;

d) Direct the Respondent No. 1 to place on record before this Hon'ble Court, its duly audited financial statements for the last 5 years, including and not limited to its Balance Sheets, P & L accounts and statement of its assets and liabilities;

e) Direct the Respondent No.2 to place on record before this Hon'ble Court the duly audited statement of account/ledgers maintained by the Respondent No. 2 pertaining to the amounts owed by it to the Respondent No. 1 in all its contracts/work order entered with the Respondent No. 1;

f) In the alternative to Prayer a) above, direct the Respondent No.2 to deposit a sum of Rs. 4,75,15,335/- (Rs. 3,33,10,498/- amount due towards certified bills along with interest of Rs. 90,70,997/- upto 05.05.2016 and retention money of Rs. 51,33,840/-) with this Hon'ble Court from the sum payable by the Respondent No. 2 to Respondent No.1, and direct that the said amount shall remain deposited during the pendency of the arbitral proceedings;

g) During the pendency of the instant petition, restrain the Respondent No.2 from disbursing any sum(s) to Respondent No.1;

h) During the pendency of the instant petition, once the statement of assets is submitted by the Respondent No. 1 before the Hon'ble Court, restrain the Respondent No.1 from alienating its assets to the extent of dues payable by

Respondent No.1 to the Petitioner;

i) Pass ad-interim ex-parte order in terms of prayers (a) to (h) above in favour of the Petitioner and against the Respondents."

2. Insofar as relief against respondent no.1 is concerned, it is admitted that the Arbitral Tribunal has been constituted and the parties are not precluded from claiming any relief before the Arbitral Tribunal. In the circumstances, this Court is not inclined to examine the question of granting any relief against respondent no.1.

3. Insofar as relief against respondent no.2 is concerned, respondent no.2 has filed an affidavit indicating that the sum equivalent to 10% of the executed value of the contract for "Wagon Tippler and Conveying & Crushing Plant Package, NTPC-VSTPP, STAGE-III" as awarded to respondent no.1 is retained by respondent no.2.

4. In my view, the interest of petitioner would be sufficiently safeguarded if respondent no.2 is directed to inform the petitioner at least two weeks prior to making any payment in relation to the aforesaid contract namely the works relating to "Wagon Tippler and Conveying & Crushing Plant Package, NTPC-VSTPP, STAGE-III." The petitioner would be at liberty to approach the Court or the Arbitral Tribunal to seek appropriate reliefs as and when such occasion arises.

5. It is clarified that nothing stated herein shall be read as an expression of opinion as to the merits of the claim as the same have not been examined by this Court. The parties are at liberty to approach the Arbitral Tribunal for

such relief as may be advised.

6. The petition is disposed of with the aforesaid observations. The pending application also stands disposed of.

VIBHU BAKHRU, J

JANUARY 04, 2017
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