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

+ **O.M.P.(I) (COMM.) 157/2017**

H.R.BUILDERS

..... Petitioner

Through Ms. Ansuya Salwan, Advocate

versus

DELHI AGRICULTURE MARKETING BOARD

& ANR.

..... Respondents

Through Mr. Avnish Ahlawat, Advocate for
Respondent No.1
Ms. Adwaita Sharma, Advocate for
Respondent No.2

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.04.2017**

IA No. 4470-71/2017

1. Exemptions are allowed, subject to all just exceptions.
2. The applications are disposed of.

O.M.P.(I) (COMM.) 157/2017

3. 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) Stay the encashment of the Bank Guarantee No. 11450000715 for an amount of Rs.91,14,000/- drawn upon Oriental Bank of Commerce, B- 98, Pushpanjali Enclave, Pitampura, New Delhi-110063; and

- (b) In case of encashment, the Respondent No.2 be directed to refund the Pay Order for an amount of Rs.91,14,000/- to the Petitioner forthwith;
- (c) Release to the Petitioner the original Bank Guarantee No. 75108009 of Rs.50 Lacs drawn upon Punjab & Sind Bank, Paschim Vihar New Delhi, lying lapsed with the Respondent.
- (d) Release the Bank Guarantee No. 11450000715 for an amount of Rs.91,14,000/- drawn upon Oriental Bank of Commerce, B- 98, Pushpanjali Enclave, Pitampura, New Delhi-110063."

4. The petitioner is a contractor for civil works and was awarded the contract for construction of building blocks (hereafter 'the works') by respondent no.1. The works were to commence with effect from 28.02.2008 and were to be completed by 27.11.2009. Admittedly, there was a delay in execution of the works and disputes arose between the parties. It is the petitioner's case that the delay was entirely attributable to the respondent no.1.

5. The said disputes were referred to arbitration. In terms of the contract, the petitioner has furnished two bank guarantees: one bank guarantee for a sum of ₹91,41,000/- issued by Oriental Bank of Commerce and the second bank guarantee for a sum of ₹50,00,000/- issued by Punjab & Sind Bank, Paschim Vihar, New Delhi. The aforesaid bank guarantees were issued in lieu of security deposit. In terms of the contract between the parties, the security deposit was to be maintained till 12 months after completion of the works and was to be adjusted *inter alia* on account of any defect or damage found in the works.

6. Although, the bank guarantee for a sum of ₹50,00,000/- has elapsed, the other bank guarantee for a sum of ₹91,41,000/- issued by Oriental Bank of Commerce (respondent No.2) is valid till 07.02.2018.

7. The disputes between the parties have already been adjudicated by the arbitral tribunal and it is stated that an award has been rendered in favour of the petitioner, *inter alia* directing return of the bank guarantees. The said arbitral award has been challenged by respondent no.1 under section 34 of the Act (being OMP 307/2015). The learned counsel for the parties state that the said petition is now listed before this Court on 25.07. 2017.

8. It is not disputed that if the award passed in favour of the petitioner is sustained, the bank guarantee in question would have to be released to the petitioner. In the circumstances, the respondent cannot be permitted to encash the bank guarantee pending adjudication of the petition under section 34 of the Act (OMP 307/2015).

9. Accordingly, the respondent no.1 is restrained from invoking the bank guarantee in question. Respondent no.2 is also restrained from making any payment in respect of the bank guarantee in question. This is subject to the petitioner keeping alive the said bank guarantee for a sum of ₹91,41,000/- issued by Oriental Bank of Commerce.

10. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 17, 2017

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