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

+ **FAO(OS) (COMM) 98/2017**

INDIAN POWER CORPORATION (HALDIA) LIMITED

..... Appellant

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Ajay Bhargava, Mr. Shounak Mitra &
Mr. Vinam Gupta, Advs. along with Mr. Santanu
Roy, AR.

versus

SCORPIO ENGINEERING PRIVATE LIMITED & ORS

..... Respondents

Through: Mr. Darpan Wadhwa, Sr. Adv. with
Mr. Arjun Syal, Mr. Manu Seshadri, Ms. Sahiba
Ahluwalia & Mr. Ishan Bisht, Advs. for R-1.
Mr. K.V. Vibhu, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **08.05.2017**

CM Nos.17215/2017 (exemption) & 17216/2017 (exemption)

Allowed, subject to just exceptions.

FAO(OS) (COMM) No.98/2017 & CM Nos.17214/2017 (stay)

1. Issue notice.
2. Mr. Arjun Syal and Mr. K.V. Vibhu, the learned counsels accept notice on behalf of respondent Nos.1 and 2 respectively.
3. The appellant is aggrieved by the order of the learned Single Judge which permitted withdrawal of application under Section 9 of Arbitration and Conciliation Act, 1996, seeking to encash two kinds of bank guarantees i.e. performance and advance bank guarantees. The grievance is on the

score that the learned Single Judge by an ex parte order directed that the bank guarantees would not be encashed by the appellant without prior notice of three working days.

4. It is contended that the order was made even while permitting withdrawal of the application and without notice and therefore cannot be sustained. Learned senior counsel relied upon *Ajay Mohan v. H.N. Rai* (2008) 2 SCC 507. Learned senior counsel for the respondent contends that the issue has been rendered academic since the bank guarantees were invoked later through a device i.e. the demand for extension of instructions failing which the letters themselves were to be treated as demands for encashment.

5. It transpired during the hearing that the respondent has preferred other Section 9 application which is pending and which is likely to be heard in future. In these circumstances, the limited nature of the relief granted by the impugned order, is rendered academic given that to the extent there is a demand for extension, of any particular guarantees, and in default there is a demand, the orders stand complied with. As far as the guarantees for which there is no such demand or similar demand for extension, the Court clarifies that the appellant is at liberty to take all steps available with him.

6. The appeal is disposed of in the above terms.

7. Copy of the order be given dasti under the signatures of the Court Master.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J