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

\+ FAO(OS) (COMM) 104/2017

JPC INFRASTRUCTURE & CONSTRUCTIONS (P) LTD
..... Appellant

Through Mr. Rahul, Advocate.

versus

ALSTOM SYSTEMS INDIA PVT LTD. ..... Respondent

Through Mr. Atul Sharma, Mr. Milanka Chaudhury, Mr. Dinesh Pardasani & Ms. Abhilasha Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

O R D E R

% **12.05.2017**

Having heard learned counsel for the appellant, we are not inclined to interfere with the impugned order dated 21st April, 2017 declining prayer for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 in OMP (I) (COMM) No. 164/2017, ***JPC Infrastructure and Constructions Private Limited versus Alstom Systems India Private Limited.***

2. The issue relates to encashment of the bank guarantee, the relevant terms of which have been extracted in the impugned order and read as under:-

> "After the Sub Contractor has signed the aforementioned contract with the Contractor, the Bank is engaged to pay the Contractor, any amount up to and inclusive of the aforementioned full amount of the

> Performance Security upon written order from the Contractor to indemnify the Contractor for any liability of damage resulting from any defects or shortcomings of the Sub Contractor or the debts he may have incurred to any parties involved in the works under the Sub Contract mentioned above, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Contractor immediately on demand without delay and demur and without reference to the Sub Contractor and without the necessary of a previous notice or of judicial, or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Sub Contractor. The Bank shall pay to the Contractor any money so demanded notwithstanding any dispute/disputes raised by the Sub Contractor in any suit or proceedings pending before any court, Tribunal or Arbitrator/s relating thereto and liability under this guarantee shall be absolute and unequivocal."

3. The impugned order refers to the aforesaid clause, which makes reference to "actual, estimated or expected" debts, etc. and accordingly for this reason and other reasons, distinguishes two judgments relied upon by the appellant in the case of ***Union of India versus Raman Iron Foundry***, (1974) 2 SCC 231 and ***Gangotri Enterprises Ltd. versus Union of India and Others,*** (2016) 11 SCC 720.

4. In the present case the appellant had not pressed the case of fraud or irreparable injury or even special equity. The appellant had pleaded and submits that there were inter se dispute between the parties, with both parties making allegations against the other and, therefore, the respondent should be interdicted from encashment of the bank guarantee.

5. Keeping in view the terms of the bank guarantee as well as the reasoning given in the impugned order, no interference is required. The appeal is dismissed, without any order as to costs.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

MAY 12, 2017
VKR