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

+ **FAO(OS) (COMM) 103/2017 & CM Nos. 17715/2017,
17716/2017**

HINDUSTAN CONSTRUCTION COMPANY LTD..... Appellant

Through: Mr.Darpan Wadhwa, Sr. Advocate
with Ms. Malavika Lal and
Mr.Arn timer Kumar, Advocates.

versus

IRCON INTERNATIONAL LTD Respondent

Through: Mr.Dinesh Agnani, Sr. Advocate
with Ms. Leena Tuteja, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

**ORDER
09.05.2017**

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1. The appellant/petitioner is aggrieved by the order dated 05.05.2017 passed by the learned Single Judge disposing of its application under Section 9 of the Arbitration and Conciliation Act, 1996 praying *inter alia* from restraining the respondent from encashing/invoking the Bank Guarantees as per Schedule-I and Annexure-1 (colly) attached to the petition.

2. By the impugned order dated 05.05.2017, the learned Single Judge has declined to pass any restrain orders against the respondent and further directed that the respondent shall furnish the correct computation of the amounts due to it from the appellant against the mobilisation advance to

the Banks and approach the Banks only for the amounts due and payable and not to the full extent of the sums guaranteed of the Bank guarantees.

3. Mr. Dinesh Agnani, Senior Advocate appearing for the respondent states that the some of the Bank Guarantees offered by the appellant have been encashed and the rest of the mobilisation advance has already been adjusted from the running account bills of the appellant. He hands over a computed statement as furnished by the respondent to the concerned Banks, with a copy to the learned Counsel for the appellant.

4. It is submitted that against Bank guarantees worth Rs.180 Crores offered by the appellant, the respondent has encashed Bank Guarantees to the tune of Rs.117.44 Crores, after adjusting the mobilisation advances that have been recovered from the running account bill of the appellant. He clarifies that the Bank guarantees of Rs.4 Crores offered by the appellant through ICICI Bank has not been encashed and the same shall be returned to the appellant within one week.

5. In view of the aforesaid submissions, the present appeal is disposed of having been rendered infructuous along with the pending applications.

6. At this stage, Mr.Darpan Wadhwa, learned Senior Advocate appearing for the appellant submits that the project in question is very prestigious and of national importance and therefore, the respondent may be called upon to re-consider its decision to terminate the contract vide letter 27.04.2017.

7. Learned Senior Advocate appearing for the respondent states that he has no objection to the appellant approaching the respondent directly

for any negotiations/reconsideration of the decision taken to terminate the contract.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 09, 2017
ssc

