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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (OS) (COMM) 126/2017, CAV 566/2016,**
CM APPL.21793/2017

PUBLIC WORKS DEPARTMENT GOVT OF NCT OF DELHI
..... Appellant
Through: Mr. Siddharth Shankar Ray, Advocate.

versus

ITD CEMENTATION INDIA LTD Respondent
Through: Mr. Manish Dembla with Mr. Sidhant
Kaushik, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAVIN CHAWLA

% **ORDER**
31.05.2017

CAV 566/2016

Counsel for the respondent has put in appearance.

Caveat stands discharged.

FAO (OS) (COMM) 126/2017, CM APPL.21793/2017

Issue notice. Mr. Manish Dembla, learned counsel for the respondent accepts notice.

With consent, the appeal was heard finally.

The appellant questions the order made by the Single Judge under Section 9 of the Arbitration and Conciliation Act. The ITD
FAO (OS) (COMM) 126/2017

Cementation India Ltd., i.e., the respondent (hereafter referred to as “ITD”) had approached this Court under Section 9 claiming *inter alia* restraint orders against the present appellant from encashing the bank guarantees for various amounts. The appellant had intimated that the bank guarantees could be encashed towards the liquidated damages assessed by it under the contract entered into by the parties. Complaining that the liquidated damages could not be invoked *per se* but had to be based on some objective material too, ITD approached the Court. The learned Single Judge after hearing the parties was of the opinion that the materials exchanged by the parties *prima facie* indicated that the delay in execution of the project by the ITD was for reasons beyond its control. In these circumstances, the Single Judge expressed its further *prima facie* opinion that the liquidated damages ought not to be levied and that instead the appellant should disburse the amount. At the same time, the Single Judge balanced the competing rights of the parties by requiring ITD to furnish an unconditional bank guarantee of the amount in dispute (i.e., the amount claimed Rs.2,79,90,174/-).

We have heard the counsel for the parties. This Court had suggested to the appellant that it may approach the Arbitral Tribunal and seek variation of the order made by the Single Judge under Section 17 of the Act. This course was acceptable to the appellant; counsel for the ITD further submits that in such an event, the views expressed by the Single Judge may not be deemed to be an expression on the merits of the case.

In view of the statements made by counsel for the parties, the appellant is at liberty to seek variation or vacation of the impugned order of the Single Judge before the Arbitral Tribunal; it is also clarified that the observations made in the impugned order shall not be construed as conclusive as to the merits of the case - it is evident from the order that the directions were based only on the *prima facie* expression.

All rights and contentions of the parties are reserved.

The appeal is disposed off in the above terms.

S. RAVINDRA BHAT, J

NAVIN CHAWLA, J

MAY 31, 2017
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