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

+ **O.M.P.(I) (COMM.) 469/2016 & IA 327/2017**

AFCONS INFRASTRUCTURE LTD.

..... Petitioner

Through: Mr. Manu Seshadri with Mr. Tamnay
Nandi & Ms. Sahiba Ahluwalia,
Advocate

versus

IRCON INTERNATIONAL LTD.

..... Respondent

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

CORAM: JUSTICE S. MURALIDHAR

ORDER

18.01.2017

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1. At the outset, Mr. Agnani, learned Senior counsel for the Respondent has, in response to the order dated 13.1.2017, produced a letter dated 27.12.2016, written by the Respondent to the State Bank of India (SBI), returning one of the Bank Guarantees (BGs) which was for Rs. 13,95,12,900/-. He submits that as and when the mobilization advance is recovered from the running account (RA) bills, the corresponding BG will be returned.

2. Mr. Manu Seshadri, learned counsel for the Petitioner, submits that as against the Petitioner's entitlement to extension of time (EOT) for at least 504 days, the Respondent has granted as on date EOT only for 160 days and

that too without waiving LD (liquidation damages). As a result, the petitioner apprehends that the LD @ 5% will be recovered from the remaining RA bills leaving very little liquidity for the petitioner to complete the project. This would cause undue hardship for the Petitioner. He accordingly prays that the Respondent should be restrained from recovering any further LD from the Petitioner's RA Bills till the completion of the project.

3. As far as the above submission is concerned, it is not that the grant of EOT is not without LD. In other words, both the grant of EOT and the recovery of LD appear to go hand in hand. It will not be open to the petitioner to accept one and reject the other. In fact, Mr. Seshadri pointed out that the Petitioner is aggrieved even by the decision to grant EOT only for 160 days without waiving LD.

4. In that event, it would be open to the Petitioner to seek appropriate remedy in accordance with law both as regards the failure to grant EOT in the manner sought by the Petitioner as well the deduction of LD from its RA bills.

5. It is further noted that while the decision to grant or not to grant the EOT is arbitrable, the decision of the Engineer to recover LD from the RA bills is not. In the circumstances, no interim relief in that regard can possibly be granted at this stage.

6. It is, however, clarified that this order will not preclude the Petitioner

from raising the said challenge in accordance with law.

7. Mr. Seshadri finally offers that for the component of LD that remains to be recovered, the Petitioner is prepared to furnish a BG to the Respondent. If such request is made within the next one week, the Respondent will consider it on merits.

8. The petition and the pending application are disposed of.

S.MURALIDHAR, J

JANUARY 18, 2017

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