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

+ **O.M.P.(I) (COMM.) 479/2016**

ISGEC HEAVY ENGINEERING LTD. Petitioner

Through Mr K. Datta, Mr Manish Srivastava and
Mr Shantanu Parashar, Advocates.

versus

M/S FERNAS CONSTRUCTION INDIA PVT
LTD & ANR.

..... Respondents

Through Mr N. Prashant Kr Nag, Advocate for R1.
Mr Shiv K. Tyagi, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.02.2017**

The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the respondent No.1 be interdicted from invoking the performance bank guarantee bearing No. 5008811BG0000022 dated 25.11.2011 in the sum of Rs.86,00,000/-.

The learned counsel appearing for the respondents states that the interim order passed on 16.12.2016 may be confirmed subject to the respondents' right to seek variation/vacation of the interim order before the arbitral tribunal.

Accordingly, the interim order order passed on 16.12.2016 is confirmed and shall continue to be operative until varied or vacated by the arbitral tribunal (as and when constituted). The respondents would be at

liberty to apply for vacation/variation of the said order before the arbitral tribunal and the arbitral tribunal shall hear any such application uninfluenced by any observation made by this court in these proceedings.

This order is subject to the petitioner taking necessary steps for invoking the arbitration clause and for appointment of the arbitrator to ensure that the arbitral tribunal is constituted within a period of three months from today. It is clarified that if the petitioner does not take the necessary steps for appointment of the arbitrator within the period as directed above, the present order shall stand vacated on the expiry of the period of three months from today.

The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 20, 2017

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