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

+ O.M.P.(I) (COMM.) 275/2017

AFCONS INFRASTRUCTURE LIMITED Petitioner

Through Mr.Gopal Jain, Sr.Adv. with
Mr.Manu Sheshadri, Mr.Ishan Bisht and Mr.Kirti
Awasthi, Advs.

versus

IRCON INTERNATIONAL LIMITED Respondent

Through Mr.Dinesh Agnani, Sr.Adv. with
Ms.Leena Tuteja and Mr.Ishaan Chawla, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **26.07.2017**

IA No.8341/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P.(I) (COMM.) 275/2017

1. This petition is filed under section 9 of the Arbitration and Conciliation Act, 1996 seeking to restrain the respondent from recovering from the bills of the petitioner interest on the alleged amount of liquidated damages of Rs.14.3 crores pending disposal of the arbitration proceedings. The parties have entered into an Agreement regarding work pertaining the Jammu and Kashmir Rail Link Project-Dharam-Qazigund section comprising of the work of construction of Tunnel No. T 74-R etc.

2. It is the case of the respondent that there is a delay in completion of

the construction work on account of which the respondent sought to recover liquidated damages from the dues of the petitioner. The petitioner filed a petition before this court under section 9 of the Act being OMP (I) (Comm.)No.469/2016 which was disposed of on 18.1.2017 noting 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. The court declined interim relief at that stage with the clarification that the said order would not preclude the petitioner from raising the said challenge in accordance with law. The order also notes an offer by learned counsel for the petitioner that for the component of LD that remains to be recovered, the petitioner is prepared to furnish a bank guarantee to the respondent. It was directed that if such a request is made within next one week, the respondent will consider it on merits.

3. I am informed by the parties that the respondent has accepted the request of the petitioner and are not deducting liquidated damages from the dues of the petitioner, upon the petitioner furnishing bank guarantee to secure payment of liquidated damages.

4. I have heard learned senior counsel for the parties. Learned senior counsel for the petitioner has strenuously pleaded that in law there is no right to recover interest in this manner. It is further urged that the issue of liquidated damages itself will have to be adjudicated upon by an appropriate court/Arbitrator. Learned senior counsel appearing for the respondent submits that as per decision taken by the respondent, it was agreed to accept the bank guarantees and not to deduct the liquidated damages from the dues of the petitioner subject to deduction of interest. Learned senior counsel for the petitioner in rejoinder has stated that no such decision has been

communicated to the petitioner.

5. It is quite clear that in the eventuality of liquidated damages as payable by the petitioner, necessary consequences of the same would ordinarily be grant of interest in favour of the respondent.

6. Keeping in view the earlier order of this court dated 18.01.2017 and the fact that the respondents have not deducted LD from the running bills of the petitioner on the petitioner furnishing the bank guarantee, in order to secure the interest of the respondent, the petitioner may give appropriate bank guarantee to secure the interest claim being made by the respondent. In the eventuality of the bank guarantee is given, the respondents shall not deduct the same from the running bills of the petitioner.

7. The above order shall continue to operate till decision of the Arbitral Tribunal, or until it is modified, varied or vacated by the concerned Arbitral Tribunal.

8. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JULY 26, 2017

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