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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 153/2017 & CM 27419/2017**

NORTHERN RAILWAY Appellant
Through: Ms.Geetanjali Mohan, Adv.

versus

V K SOOD ENGINEERS AND CONTRACTORS SCO NO 85 Respondent
Through Mrs.Anusuya Salwan, Ms.Nikita
Salwan, Advs. Along with Mr.Puneet
Sood, partner in person.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **22.08.2017**

This intra-court appeal impugns the order dated 17.07.2017 passed by learned Single Judge in OMP (I) (COMM) 242/2016.

2. The impugned order directs the Registry to release Rs.44,09,733/- plus interest accrued to M/s V.K. Sood Engineer and Contractor.

3. The impugned order dated 17.07.2017 was passed after order of remand by the Division Bench by order dated 21.04.2017 in FAO(OS)(COMM) 5/2017.

4. Northern Railway has made a claim against V.K. Sood Engineer & Contractor DDSJV for Rs. 1,79,00,000 with interest from 2012. It is stated

that the total amount due and payable at present would be to the tune of Rs. 3,13,00,000. The said dispute is contested and pending arbitration proceedings.

5. Northern Railway has been restrained from taking coercive steps for recovery against V.K. Sood Engineer & Contractor DDSJV vide order dated 20.01.2015 in OMP 71/2015. This order restraining the appellant from taking coercive steps against V.K. Sood Contractor & Engineer DDSJV has been upheld by the Division Bench. Special Leave petition against the restraint order has been dismissed.

6. North Central Railway has withheld an amount of Rs. 1,84,79,846 due and payable to V.K. Sood Engineer & Contractor DDSJV. This said work was completed on 10.08.2014. Final Bill was prepared and has been kept pending since 30.03.2015. In addition to said work, the present respondent M/S V.K. Sood Engineer & Contractor also have to be paid in respect of the contract for construction of road bridges at level crossing no. 52-C. The construction is complete. The final bill for the same has not been prepared. As per the respondent, the total payment due would be about Rs. 2,82,00,000. The respondent has deposited Rs. 34,00,000 in cash as security in this contract. The respondent has also given a Performance Bank

Guarantee for Rs. 34,00,000. This bank guarantee after renewal has to be handed over to the appellant. The said bank guarantee is subject matter of restraint order OMP (I)(Comm) 3/2017 and would abide by the orders passed therein.

7. In the aforesaid circumstances, we feel that the impugned order directing release of Rs. 44,09,773 plus interest to the respondent V.K. Sood Engineer & Contractor does not require any interference.

8. However, to safeguard the interest of the appellant we would direct that the partners of V.K. Sood Engineer & Contractor would give personal guarantees that they would be personally and individually liable to pay the dues of V.K. Sood Engineer & Contractor DDSJV to the extent of Rs. 44,09,773 paid to them. The guarantee can be invoked by the appellant after the decision of the arbitration case between them and V.K. Sood Engineer & Contractor DDSJV. The guarantee would be in favour of Northern Railway and breach thereof would also entail initiation of contempt of court proceedings. Guarantees will be furnished before Joint Registrar and before payment of Rs. 44,09,773 is released. Counsel for the respondent has stated that the renewed Performance Bank Guarantee would be handed over to the appellant on or before the release of Rs. 44,09,773 with interest.

With the aforesaid modification, the appeal is disposed of. No order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 22, 2017/vp