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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) 449/2015

QUIPPO CONSTRUCTION EQUIPMENT LTD. Petitioner
Through: Mr. Raghunath Ghose with Mr. Santanu
Ghosh, Advocates.

versus

JANARDAN NIRMAN PVT. LTD. Respondent
Through: Mr. Kuriakose Varghese with Mr. V.
Shyamohan and Ms. Saumya Sharma, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

06.01.2017

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1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking interim relief post the passing of an *ex parte* Award against the Respondent.

2. Admittedly, the said Award is under challenge before the Court of the District Judge, Alipore, West Bengal. The case of the Petitioner is that the petition under Section 34 of the Act is time barred. In any event, it is for the said Court to consider that issue.

3. As far as the present petition is concerned, it is noticed that it has been pending since August 2015 and till date no interim order has been passed. Learned counsel for the Petitioner seeks protection as regards the awarded amount in the sum of Rs.78,78,533 on the ground that in the absence

thereof, the Petitioner may be left only with a paper Award and nothing would be recovered from the Respondent. It is seen that one of the grounds urged by the Respondent in its reply is that the Award itself is illegal primarily on the ground that the appointment of the Arbitrator was without the consent of the Respondent.

4. Learned counsel for the Petitioner drew the attention of the Court to the arbitration clause in the agreement between the parties which required the Arbitrator to be appointed by Construction Industry Arbitration Council, New Delhi. It is seen that one Mr. L.C. Jain was appointed as a sole Arbitrator. There is nothing to show that the Respondent participated in the appointment of Mr. L.C. Jain. For all practical purposes, it appears that the appointment was unilateral and without the consent of the Respondent.

5. The Court is, therefore, of the view that no *prima facie* case is made out by the Petitioner as far as the present petition is concerned. The petition is, accordingly, dismissed. However, this order will not have a bearing on the decision that the District Court, Alipore, West Bengal might render in the petition under Section 34 of the Act.

S. MURALIDHAR, J

JANUARY 06, 2017

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