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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 457/2017 & IA 13113/2017**
KALPATARU POWER TRANSMISSION LTD.

..... Petitioner

Through: Mr.Akhil Sibal, Sr. Adv. with
Mr.Rishi Agarwal, Ms.Aanchal
Mullick, Mr.Sunil Mittal, Mr.Manu
Sahni, Advs.

versus

GAIL GAS LIMITED Respondent

Through: Mr.Sachin Puri, Sr.Adv. with
Ms.Purnima Maheshwari, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **09.11.2017**

The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner Kalpataru Power Transmission Ltd. *inter alia* praying for the following reliefs:-

- i) *Direct the Respondent to deliver up and release the original of the Bank Guarantee No. 35930IGLooo1010 dated 15.01.2010 issued by Union Bank of India, Gandhinagar under the terms of 24 of the GCC of the Letter of Award dated 18.01.2010 for the work of Pipeline Laying and Associated Works for the CGD Project of Gail Gas Limited in Kota City, to the Petitioner.*
- ii) *In the alternative, restrain the Respondent its employees, officers, representatives, agents or any of*

them from invoking/ encashing the said Bank Guarantee or receiving any monies under the said Bank Guarantee.

As far as prayer (i) is concerned, Mr. Sibal submits that as the petitioner has already invoked arbitration, he would not press the said prayer at present reserving leave to agitate this issue before the Arbitral Tribunal in accordance with law.

As far as the prayer (ii) is concerned, presently there is no invocation of the bank guarantee. I am therefore, of the opinion that this prayer may be premature in nature. However, taking into account the averments made in the petition and after hearing the learned Senior Counsel for the respondent, I direct that equities can be balanced if the respondent is directed to give an advance notice of five working days to the petitioner before invoking the bank guarantee so that the petitioner can approach an appropriate forum for relief in accordance with law.

I may hasten to add here that my above direction is in no manner to be understood as having expressed any opinion on merit of the averments made in the petition.

Dasti to parties.

NAVIN CHAWLA, J

NOVEMBER 09, 2017/NK