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

+ **O.M.P.(I) (COMM.) 47/2018 & IA No. 1364/2018**

ERA INFRA ENGINEERING LIMITED

..... Petitioner

Through Mr Suhail Sehgal and Mr Achin Goel,
Advocates.

versus

PUBLIC WORKS DEPARTMENT & ANR.

..... Respondents

Through Mr Ramesh Singh, Senior Standing
Counsel for GNCTD with Mr Chirayu Jain,
Mr Anmrudh Deshmukh, Advocates.
Mr Dev P. Bhardwaj, CGSC for UOI with
Ms Anubha Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.05.2018

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“(i) cancel, quash and/or set-aside the encashment of aforesaid performance bank guarantee by the respondents against the petitioner;

AND/OR

(ii) direct both the respondents to cancel the encashment of the said Performance Bank Guarantee amounting to Rs.1,59,62, 764 /- (Rupees One Crore Fifty Nine Lakh Sixty Two Thousand Seven Hundred Sixty Four Only) by the petitioner to respondent No.2 through its banker Oriental Bank of Commerce, New Delhi and further cancel/quash all letters, office orders etc. in this regard

issued by both the respondents against the petitioner;

(iii) That all subsequent orders, directions, notices in this regard issued by the respondents against the petitioner may also kindly be set-aside and quashed;”

2. The grievance of the petitioner is that respondent no.2 has encashed the bank guarantees furnished by the petitioner pursuant to the communications issued by respondent no.1. These communications have been issued by respondent no.1, as respondent no.1 claims that certain amounts are due from the petitioner in respect of the contract dated 29.12.2008 entered into between the petitioner and respondent no.1.

3. It is also pointed out that an arbitral tribunal has been constituted to adjudicate the disputes between the petitioner and respondent no.1. The petitioner claims that it was not permissible for respondent no. 1 to issue communications directing respondent no. 2 to invoke the bank guarantees in respect of its un-adjudicated claims as the same could not be considered as a debt owed by the petitioner to respondent no.1. Clearly, this is a substantive issue that would require to be decided by the arbitral tribunal.

4. The petitioner may also have a claim against respondent no.2 for invoking its bank guarantee solely on the basis of the directions issued by respondent no.1; however, the petitioner would be required to take up that claim with respondent no.2 and the petitioner is also not precluded from instituting any proceedings as may be available in law against respondent no.2. However, at this stage this Court is not inclined to pass any orders in this petition.

5. Insofar as any interim measure or protection is concerned, the arbitral tribunal has already been constituted. In the event, the petitioner seeks any

interim measure or protection against respondent no.1 it would be open for the petitioner to move an appropriate application under Section 17 of the Act, before the arbitral tribunal. The petitioner may also avail such legal remedies against respondent no.2. It is also clarified that in view of the amendments to Section 17 as introduced by the Arbitration and Conciliation (Amendment) Act, 2015, in a given case, the arbitral tribunal may also issue orders to be complied with by parties who are not signatories to the arbitration agreement.

6. The petition is disposed of with the aforesaid observations. Pending application stands disposed of.

VIBHU BAKHRU, J

MAY 10, 2018

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