$~45

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

\+ O.M.P.(I) (COMM.) 89/2018

MANIKARAN POWER LTD. ..... Petitioner
Through: Mr Sanjeet Kumar Trivedi, Advocate.

versus

QUENEXT DECISION SCIENCE
TECHONLOGY PRIVATE LIMITED & ANR. ..... Respondents
Through: Counsel (appearance not given).

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **26.02.2018**

I.A. 2785/2018

1. Exemption is allowed, subject to all just exceptions

2. The application stands disposed of.

O.M.P.(I) (COMM.) 89/2018 and I.A. No. 2784/2018

3. 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) Direct the Respondent No.1 to open a joint bank account/escrow account with the Petitioner and keep any/all payments received/to be received from Respondent No.2 in the said account, as may be payable to Quenext Manikaran Joint venture in terms of work contract dated 06.04.2016 pursuant to the e-Tender with specification no CCP-II/43/2015-2016, till the final decision of the Arbitral proceedings;
>
> (ii) Direct the Respondent no.2 that any amount payable to

the Quenext Manikaran Joint Venture, be only paid to the joint account/escrow account of the Petitioner and Respondent no.1 herein as mentioned above;

(iii) Restrain the Respondent no.1 from withdrawing any amount from the joint account without consent of the Petitioner."

4. The petitioner is a company incorporated under the Companies Act, 1956 and had entered into a Joint Venture Agreement dated 06.10.2015 (hereafter 'JV Agreement') with respondent no.1 for the purpose of submitting the bids for execution of Demand Side Management (DSM) work in India.

5. The petitioner claims that a bid for the work of "Real Time Decision support for Day to Day effective Energy Management" submitted by the Joint Venture was accepted and a Letter of Approval (LOA) dated 23.02.2016 was issued in favour of respondent no.1. However, the LOA indicated in parenthesis that respondent no. 1 was in Joint Venture with petitioner no.1 company.

6. The term of the said contract (LOA) was for a period of 24 months from the date of the LOA. It is the petitioner's case that in terms of the JV Agreement, the parties were obliged to receive money in an escrow account, which would be distributed in the specified ratio. The petitioner complains that respondent no.1 is in breach of the said JV Agreement and has been appropriating the payments received from respondent no. 2 to the exclusion of the petitioner.

7. It is stated that the petitioner also sent a letter dated 26.04.2017 to

respondent no.2 calling upon respondent no.2 to release the petitioner's share directly as the petitioner was not receiving the same from respondent no.1. The said notice indicated that the petitioner had made several requests to respondent no.1 for release of its share but the same has not been released. The said letter was subsequently followed by another legal notice dated 03.05.2017 to the same effect.

8. Thereafter, the petitioner also sent a notice dated 26.12.2017 to respondent no.1 calling upon the said respondent to make a payment of ₹74,76,334.08/- within a period of seven days from the receipt of the said notice. The petitioner also filed a petition under Section 9 of the Act in the Court of Additional District Judge, Dehradun praying for relief that was somewhat similar in effect.

9. It is relevant to note that respondent no.1 was not made a party to the said petition. The said petition was opposed by respondent no.2, *inter alia,* on the ground that the disputes sought to be agitated by the petitioner were in the context of the JV Agreement entered into between the petitioner and respondent no.1 and, therefore, no relief against respondent no.2 could be sought. The Court after hearing the rival contentions accepted the plea. The Court also came to the conclusion that the petitioner would not suffer any irreparable loss if the interim relief was not granted.

10. After filing the petition under Section 9 of the Act, the petitioner also issued a notice dated 08.01.2018 invoking the arbitration clause.

11. It is apparent from the above that although the disputes had arisen between the parties as early as on 26.04.2017, the petitioner had not taken

any effective steps at the material time to invoke the arbitration clause. It is relevant to note that the contract with respondent no.2 came to an end on 22.02.2018.

12. It has been more than a month and a half since the petitioner had issued the notice dated 08.01.2018; however, the petitioner has taken no further steps as yet for constitution of the Arbitral Tribunal.

13. It is also apparent from the above that the petitioner's claim is essentially a money claim.

14. Considering that the petitioner has approached this Court almost a year after the disputes had arisen and there is no material to indicate that the respondent no.1 would not have the means to satisfy the petitioner's claim (if awarded); this Court is of the view that, at this stage, an interim order is not warranted.

15. In view of the above, the petition alongwith the pending application is disposed of leaving it open to the petitioner to seek appropriate measures to interim protection from the Arbitral Tribunal as and when constituted.

VIBHU BAKHRU, J

FEBRUARY 26, 2018
RK