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

+ **FAO 107/2018, CM APPL. 10932/2018**

GLOBAL ENERGY PVT LTD

..... Appellant

Through: Mr. Sanjay Abbot, Mr. Tanmaya
Mehta, Mr. Tarang Gupta and Mr.
Anurag Sahay, Advocates.

versus

FOUNDATION BRAKES MANUFACTURING PVT LTD

..... Respondent

Through: Mr. Rajat Sehgal and Ms. Anushree
Menon, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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11.05.2018

Under section 9 of the Arbitration and Conciliation Act, 1996 (in short “the Act”), an *ex-parte* order was passed against the appellant from invoking a Bank Guarantee. Two days’ notice was given to them to reply to the same. They appeared before the Court and sought extension of the Bank Guarantee till the application under section 9 of the Act was adjudicated upon. This relief was declined on the ground that the appellant had not even invoked the Bank Guarantee. However, the invocation could not be done because the impugned order dated 26.02.2018 had stayed the invocation of the Bank Guarantee, till the next date, i.e., 28.02.2018. A request for extension of the Bank Guarantee was made on 28.02.2018. The appellants were injuncted from invoking the Bank Guarantee on the respondent’s application. The same is still pending final adjudication.

An act of Court can do no harm. The respondent who got protection from the invocation or encashment of the Bank Guarantee during its validity cannot be any better-off if it has since expired. The Court had granted stay of a valid Bank Guarantee, therefore, till disposal of the section 9 application, *status quo* apropos the validity of the Bank Guarantee must be maintained.

In the circumstance, till the application is pending before the Trial Court, it would be in the interest of justice, that the Bank Guarantee be kept alive by the respondents to the extent of the claim by the appellants. The latter's claim is stated to be within Rs.50 lacs. Accordingly, let the said amount of Rs. 50 lacs be secured by way of a Bank Guarantee or another financial instrument to the satisfaction of the Trial Court, and be subject to further orders of the Trial Court.

In the circumstances, the parties are directed to appear before the learned Trial Court on 21.07.2018 for further assistance in adjudication of the interim applications.

The respondent contends that since the Arbitral proceedings have been initiated, therefore, an application under section 9 of the Act would be of no consequence. The learned counsel for the appellant contends that the section 9 application and the impugned order have affected the valuable rights of invocation of the Bank Guarantee. Therefore, the same would require to be secured, till it is otherwise modified in the Arbitral proceedings.

In view of the above, the Trial Court is requested to expedite the hearing of application under section 9 of the Act and endeavour to dispose off it within a period of four months, from the date, when the case is next

listed.

The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

MAY 11, 2018

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