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

+ **O.M.P.(I) (COMM.) 134/2018**

BHARAT HEAVY ELECTRICALS LTD. Petitioner
Through **Mr. Vaibhav Dabas and Mr. P. Piyush, Advs.**

versus

JHABUA POWER LTD. & ANR. Respondents
Through **Mr. Surender Kumar Gupta, Adv.**

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **14.12.2018**

1. Learned counsel for the parties inform me that an Arbitrator has already been appointed upon an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') having been moved by the petitioner.
2. I am further informed that a statement of claim has already been filed by the petitioner.
 - 2.1 This aspect is not disputed by the counsel for respondent no.1.
 - 2.2 To be noted, the respondent no.1 is the contesting party.
3. Respondent no.2 is the bank which has furnished the bank guarantee at the behest of the petitioner qua which respondent no.1 is the beneficiary.
4. The record shows that on 23.3.2018, notice in the captioned petition was issued.

4.1 Furthermore, the Court restrained the invocation of the bank guarantee till the next date of hearing, subject to the petitioner keeping the same alive.

5. Since, the Arbitral Tribunal has been constituted, I queried the counsel for respondent no.1 as to whether respondent No. 1 would be willing to agitate the matter before the Arbitral Tribunal.

5.1 Learned counsel for respondent no.1 says that he would have no objection in the Court placing the captioned petition before the Arbitral Tribunal with a request that the same be treated as an application under Section 17 of the 1996 Act.

5.2 Furthermore, learned counsel for respondent no.1 submits that the Arbitral Tribunal be requested to dispose of the Section 17 application at the earliest and that pending disposal he would have no objection to the interim order passed by this Court continuing to operate.

5.3 Mr. Dabas, who, appears for the petitioner submits likewise.

6. Accordingly, the petition is disposed of with the direction that it will be placed before the Arbitral Tribunal for passing appropriate orders.

7. The Arbitral Tribunal will treat the captioned petition as an application under Section 17 of the 1996 Act.

8. Pending disposal of the application, the interim orders dated 23.3.2018 and 2.4.2018 will continue to operate till the disposal of the application.

9. It is made clear that the Arbitral Tribunal will have the liberty to either confirm, vacate or even modify the interim orders passed by this Court.

10. The Arbitral Tribunal is requested to take up the application for hearing in the first instance.

10.1 I am informed that the Arbitral Tribunal has fixed 21.1.2019 as the next date for hearing.

11. Pending disposal of the application, the subject bank guarantees will be kept alive by the petitioner till such date the Arbitral Tribunal may direct.

RAJIV SHAKDHER, J

DECEMBER 14, 2018

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