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

+ **O.M.P.(I) (COMM.) 132/2018**

SHAPOORJI PALLONJI AND CO. PVT. LTD Petitioner

Through: Mr Ciccu Mukhopadhaya, Sr.
Advocate with Mr Ravi Tyagi, Mr
Arbaaz Hussain, Mr Animesh Sinha,
Ms Sonali Jaitley Bakshi, Mr Jaiyesh
Bakshi, Mr Kabir Chilwar and Ms
Rini Badoni, Advocates.

versus

JINDAL INDIA THERMAL POWER LIMITED Respondent

Through: Ms Suruchi Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.03.2018

IA No.4041/2018

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 132/2018

2. Issue notice. The learned counsel appearing for the respondent accepts notice.

3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the respondent be restrained from invoking or taking any further steps in regard to the Performance Bank Guarantee No.171020275152-AP

for ₹22,50,00,000/- furnished by the petitioner.

4. At the outset, Mr Mukhopadhaya, the learned Senior Counsel appearing for the petitioner states that the petitioner would extend the bank guarantee in question subject to the respondent not encashing the same.

5. Ms Aggarwal, the learned counsel appearing for the respondent opposes the said request but states, on instructions, that the respondent will not encash the bank guarantee without giving atleast 10 days prior notice to the petitioner.

6. In view of the above statement, Mr Mukhopadhaya, the learned Senior Counsel appearing for the petitioner states that the petitioner does not wish to press the present petition at this stage.

7. The respondent is bound down to the said statement made by Ms Aggarwal.

8. The petition is disposed of as withdrawn, leaving it open for the petitioner to take appropriate steps if a need so arises.

9. It is clarified that all rights and contentions of the parties are reserved. It would be open for the petitioner to seek such interim measures of protection as may be advised, including the relief as sought for in the present petition, before the Arbitral Tribunal, as and when constituted. Needless to state that the same would be considered in accordance with law.

10. It is also clarified that in the event, the bank guarantee is not extended for any reason whatsoever, the concerned bank shall encash the above bank

guarantee on the strength of this order.

11. The petition is disposed of leaving it open for the petitioner to take appropriate steps is need so arises.

12. Order *dasti* under signatures of the Court Master.

MARCH 23, 2018/MK

VIBHU BAKHRU, J