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

+ O.M.P.(I)(COMM.) 226/2018 & IAs 7170/2018

PENNAR ENVIRO LTD. Petitioner

Through: Mr.Jayant Mehta, Mr.Harsha
Peechara & Mr.Ashish Tiwari, Advs.

versus

LANCO INFRATECH LIMITED & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **21.05.2018**

This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking an Interim Order restraining the respondent no. 1 from invoking the Advance-cum-Performance Bank Guarantee dated 26.12.2016 given by the petitioner to the respondent in terms of the LOI(s) dated 13.07.2015 and 27.07.2015, as amended on 27.10.2016.

The learned counsel for the petitioner submits that on an earlier occasion, the respondent had sought to invoke the Bank Guarantee forcing the petitioner to file a petition under Section 9 being OMP. (I) (COMM.) 324/2017. On assurance from the respondent that the said invocation has been revoked and will not be given effect to, the said petition was withdrawn by the petitioner on 09.04.2017. The counsel for the petitioner further draws my attention to the order dated 11.05.2018 passed by the National Company Law Tribunal (NCLT), Hyderabad Bench wherein on an application filed by a similarly placed third party, the NCLT had directed the

Resolution Professional appointed for the respondent to approach the Tribunal and seek directions before invoking Bank Guarantee referred to in the application filed before it.

The counsel for the petitioner has drawn my attention to various orders passed by this Court in other petitions against the respondent wherein similar attempts of the respondent being made to invoke the Bank Guarantee had been stayed. He submits that in terms of the LOI the respondent is not entitled to invoke the Bank Guarantee given by the petitioner and due to the insolvency proceedings pending before the respondent company, there is no likelihood of the recovery being made from the respondent incase the Bank Guarantee is allowed to be encashed.

The learned counsel for the petitioner further submits that after filing of the present petition, petitioner has received an e-mail from the Resolution Professional informing that the invocation of the Bank Guarantee has been revoked. He submits that the petitioner apprehends that the respondent may again invoke the Bank Guarantee as it is the second time the invocation of the same has been withdrawn by the respondent. The counsel for the petitioner submits that he needs protection from such invocation of the Bank Guarantee till such time the petitioner files an appropriate application before the NCLT, Hyderabad Bench as has been filed by the other parties which are similarly situated.

Having considered the submissions made by the counsel for the petitioner, the respondent is restrained from invoking the Bank Guarantee in question for a period of four weeks from today. In the meantime, the petitioner shall file an appropriate application before the NCLT seeking appropriate relief and it would be open to the NCLT to pass appropriate

order thereon being uninfluenced by any observation made in the present order.

The petition is disposed of in the above terms.

Dasti.

NAVIN CHAWLA, J

MAY 21, 2018/rv