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

+ **O.M.P.(I) (COMM.) 243/2018**

CONCORD INFRASTRUCTURE PVT LTD Petitioner

Through: Mr Arun Batta, Advocate.

versus

SHUBKAMNA BUILDTECH PVT. LTD. Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.06.2018

IA No.7997/2018

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 243/2018

2. 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:-

- “(a) Pass an Order thereby restraining the Respondent, its employees, Representatives, Directors, Administrators etc from removing the Plan and Machineries of the Petitioner lying at the said Project Site at the plot no GH-2A, Sector- I, Greater Noida, West.
- b) Pass an Order thereby restraining the Respondent, its employees, Representative\$, Directors, Administrators etc from stopping the Guards and Employees of the Petitioner from entering into the said Project Site
- c) Pass an Order thereby restraining the Respondent from awarding the Contract in respect of the aforesaid Project

to any other Contractor and/or forcibly dispossessing from the Project, Site till the time the entire dues of the Petitioner are paid by the Respondent.”

3. The learned counsel appearing for the petitioner has referred to an email dated 17.05.2018 received from the respondent, which reads as under:-

“Its bring into your kind notice that, after so many reminders through calls, verbally and even when you were on site of Shubhkamna City, GH-02, Noida West. Kindly remove your material and machinery from above said site on immediate basis any loss or theft will not be our responsibility.”

4. It is contended by the learned counsel appearing for the petitioner that the possession of the site in question is with the petitioner and, further, that the respondent has also not terminated the contract or settled the disputes.

5. It is apparent from the above that the respondent has called upon the petitioner to stop the work. Undisputedly, the contract between the parties is a determinable one and the petitioner would have its remedies by claiming monetary damages if otherwise available in law. Clearly, the petitioner cannot continue to occupy the said site by keeping its material and equipment once the respondent has called upon the petitioner to remove the same.

6. At this stage, learned counsel appearing for the petitioner states that the petitioner would itself remove the equipment, plant, machinery and material, provided the petitioner is granted access to the site in question.

7. In view of the above, the respondent is restrained from physically

removing the equipment, plant, machinery and materials at site in question for a period of four weeks from today. In the meanwhile, the petitioner shall take steps to voluntarily remove the same as called upon to do so by the respondent by an email dated 17.05.2018. It is further directed that the respondent will grant limited access to the petitioner to enable it to remove its equipment, plant, machinery and materials at the site in question.

8. No further orders are required to be passed in this petition.
9. The petition is disposed of.
10. Order *dasti* under signatures of the Court Master.

JUNE 01, 2018
MK

VIBHU BAKHRU, J