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

+ O.M.P.(I) (COMM.) 267/2018 & I.A.No.8240/2018
M/S N. P. INFRAPROJECTS PVT. LTD. Petitioner

Through Mr.Dhruv Kupur with Mr.Vijayender
Kumar, Advs.

versus

M/S. GANNON DUNKLEY & CO. LTD. & ANR. Respondent

Through Mr. Shubhi Singh, Proxy for
Mr.S.K.Sharma, Advs for R-2.
Mr.Vaibhav Tyagi, Adv for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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29.06.2018

This O.M.P.(I) has been filed under Section 9 of the Arbitration and Conciliation Act, 1996.

Vide the present O.M.P.(I), the petitioner, has *inter alia* sought an order restraining the respondent no.1 from encashing of Bank Guarantee dated 20.07.2017. The petitioner has also sought an order restraining the respondent no.1 from depositing a cheque no.232887 issued by the Oriental Bank of Commerce, Prabhat Road Branch, Pune, amounting to Rs.2,51,00,000/- till final adjudication of the dispute between the parties through arbitration as per agreement dated 28.07.2017.

During the course of hearing, it transpires that the aforesaid

bank guarantee has already been encashed and the aforesaid cheque has also been presented by respondent no.1 to its bank namely ICICI bank, which is likely to be forwarded to respondent no.2 in the due course.

After some hearing, the matter was passed over to enable the learned counsel for the respondent no.1 to obtain instructions. After passover, the learned counsel for the respondent no.1, on instructions, fairly submits that in view of the order dated 19.05.2018 passed in Miscellaneous Civil Application no.358/2018 by the Principal District Judge, Nagpur, the respondent no.1 will request respondent no.2 to return the said cheque to them without being encashed. He further states that till the aforesaid stay continues to operate, respondent no.1 will not claim the amount in respect of the aforesaid cheque from the petitioner. He, however, submits that, in case, the aforesaid stay order is either vacated by the Principal District Judge, Nagpur or is modified by any Appellate Authority, the respondent no.1 would claim the aforesaid amount from the petitioner.

He further submits that in order to safeguard respondent no.1's interest, the petitioner should upon return of the aforesaid cheque be directed to issue a fresh cheque of the same amount, on or before 27.09.2018, to the respondent no.1.

Learned counsel for the petitioner has no objection to the aforesaid suggestion by learned counsel for the respondent no.1. It is, agreed between the parties that a fresh cheque in the above terms would be issued by the petitioner but the same would not be presented as long as the aforesaid stay order remains in force.

In view of the stand taken by learned counsel for the respondent no.1, respondent no.2 is directed not to encash the aforesaid cheque and return the same to respondent no.1.

In view of the stand taken by the learned counsel for the respondent no.1, the learned counsel for the petitioner does not wish to press the present O.M.P.(I) any further, at this stage, but seeks liberty to file an appropriate O.M.P.(I), if the need so arises, at a subsequent stage, on all grounds including grounds taken in the present O.M.P.(I).

The O.M.P.(I) stands disposed of in the above terms, with liberty as prayed for.

Dasti under the signature of Court Master.

REKHA PALLI
(VACATION JUDGE)

JUNE 29, 2018

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