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

+ O.M.P.(I) (COMM.) 306/2018

SHARMA KALYPSO PVT. LTD. Petitioner

Through: Ms.Renuka Arora and Ms.Nikita
Salwan, Advs.

versus

ENGINEERS INDIA LTD. Respondent

Through: Mr.Pradeep Dewan, Sr. Adv. with
Ms.Anupam Dhingra, Mr.Sanjay Jain
and Mr.Rajendran, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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31.07.2018

I.A.No. 10074/2018 (Exemption)

Exemption allowed subject to all just exceptions.

OMP(I)(Comm) 306/2018

This petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') *inter-alia* making the following prayer:

"it is therefore.....

(i)The encashment of the Bank Guarantee No. BOM/BG/RIL/140/1160/2015-2015 dated 11.04.2014 for a sum of Rs.18,00,000/- and Bank Guarantee No. BOM/BG/RIL/127/2013 dated 24.09.2013 amounting to Rs.35,00,000/-."

It is the case of the petitioner that in terms of the Arbitral Award dated

30.04.2018 passed by the Sole Arbitrator, the Bank Guarantee(s) in question are to be returned to the petitioner by the respondent. On an application filed under Section 33 of the Act, the Arbitrator vide his order dated 07.06.2018 has directed that the bank guarantee(s) be returned within 90 days from the date of the original Award which would be on 30.07.2018.

Learned counsel for the petitioner submits that in spite of the Award and the clarification order, the respondent vide its e-mail dated 27.07.2018 has called upon the petitioner to extend the bank guarantee(s) failing which it has threatened invocation of the same. On the same day, the respondent has issued letters to the bank stating that incase the bank guarantee(s) are not extended, the letter be treated as a request for encashment of the bank guarantee(s).

Learned senior counsel for the respondent submits that the respondent has already challenged the Arbitral Award by way of a petition under Section 34 of the Act, which is likely to be listed in the near future. He further submits that in terms of Section 36 of the Act, the Award would not become enforceable till the expiry of three months from the date of passing of the order on application under Section 33 of the Act, which is in the nature of an additional Award passed on 07.06.2018.

In view of the objection taken, learned counsel for the petitioner, on instructions submits that the petitioner would extend the bank guarantee (s) till 07.09.2018.

In view of the statement made by the learned counsel for the petitioner, the respondent is restrained from encashing the bank guarantee(s) relying upon its letters dated 27.07.2018. This interim protection is however, subject to the extension of the bank guarantee(s) as undertaken by

the petitioner within a period of two weeks from today.

The petition is disposed of with the above direction, with no order as to cost.

NAVIN CHAWLA, J

JULY 31, 2018/Arya