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

+ O.M.P.(I) (COMM.) 405/2017 & IA No.1160/2018

ANS CONSTRUCTIONS PVT. LTD

..... Petitioner

Through: Mr S. P. Agarwal, Sr. Advocate with  
Mr Sushil Aggarwal, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC  
and Mr T. P. Singh, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**07.03.2018**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

- “i) grant interim stay against letter dated 19.09.2017 of the Respondent addressed to the General Manager, Canara Bank, D-84, Malviya Nagar, New Delhi-17 and restrain the Respondents from encashing the Bank Guarantees of the Petitioner till such time the Arbitration Award is enforced in accordance with Section 36;
- ii) hold that the action of the Respondent seeking encashment of Bank Guarantees as malafide, illegal, fraudulent and as such not sustainable in the eyes of law.”

2. The disputes between the parties have been adjudicated and an award dated 26.07.2017 has been delivered by the Arbitral Tribunal. The petitioner has been awarded an aggregate sum of ₹1,15,10,481/- along with simple interest at the rate 11% per annum from 21.04.2014 till the date of

payment. One of the counter claims made by the petitioner was rejected and the amount as awarded in favour of the petitioner includes the adjustment made on account of the counter claim, which has been decided in favour of the respondent.

3. In the circumstances, this Court is of the view that although the arbitral award has been stayed, however, it would be apposite for the respondent to refrain from encashing the bank guarantees till the petition is disposed of by this Court. This is so because whether the bank guarantees can be invoked would depend on the decision whether the petitioner prevails in those proceedings. Accordingly, the respondent is restrained from invoking the bank guarantees furnished by the petitioner till the disposal of the petition filed by the respondent under Section 34 of the Act (OMP (COMM) No. 6/2018). This is subject to the petitioner keeping the bank guarantees alive. It is clarified that if the bank guarantees are not extended, the concerned bank shall encash the same on the strength of this order.

4. The petition and the pending application are disposed of.

**VIBHU BAKHRU, J**

**MARCH 07, 2018**

**MK**