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

+ O.M.P.(I) (COMM.) 471/2017

APARAJITA ENGICON PVT. LTD THROUGH SHRI

R.B. DUBEY, MANAGING DIRECTOR Petitioner

Through: Mr Shyam Moorjani and Mr A.P.
Dhamija, Advocates.

versus

NINANIYA ESTATES LTD. THROUGH

DIRECTOR & ORS. Respondents

Through: Ms Ranjana Roy Gawai, Mr Krishna
Keshav and Mr Vivek, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **06.04.2018**

1. 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) Allow the present petition, and consequently,

(b) Issue directions to the respondents herein to deposit a sum of Rs. 7,54,85,618.00, the amount which is due and payable to the petitioner, and the same be released to the petitioner during the pendency of the arbitration proceedings;

(c) Issue directions to the respondent No. 1 and the respondent No. 2 herein permitting the petitioner to execute the works at the site as per the terms & conditions of the Contract, by clearing all the payments of the bills raised by the petitioner with further direction that they be abide by the terms & conditions of the

Contract, and make the payment of the amount on execution of the works by the petitioner, and the petitioner would be permitted to execute the work uninterruptedly by the respondent No.1 ;

- d) Appoint a Receiver to take over the Site until disposal of this petition Direct the respondents to prepare the inventory of the consumable material, tools and plant, and the material lying at the site at PRISM Complex, Tower-A, 6th Floor, Gwal Pahari, Faridabad Road, Gurgaon of the aforesaid project, in the store of the petitioner-Company, and return the same to the petitioner;
- (e) Restrain the respondent from carrying out any work at the site Allow the petitioner to inspect the site PRISM Complex, Tower-A, 6th Floor, Gwal Pahari, Faridabad Road, Gurgaon, and maintain status quo ante as on 13.08.2017 when the workforce of the petitioner was forcefully removed;
- (f) Direct the Receiver to carry out the measurement of the work done by the petitioner; Inventory of the material and equipments / plants, machinery, tools lying on the site PRISM Complex, Tower-A, 6th Floor, Gwal Pahari, Faridabad Road, Gurgaon;
- (g) Direct the respondent to forthwith render the accounts;
- (h) Restrain the respondents from leaving the country during the pendency of the present petition.”

2. In view of the fact that, by a separate order, this Court has appointed a Sole Arbitrator to adjudicate the disputes between the parties, this Court considers it apposite to dispose of the present petition by directing that the same be considered as an application under Section 17 of the Act by the Arbitral Tribunal. The petitioner is at liberty to place the copy of the same

before the Arbitral Tribunal.

3. It is also clarified that all the rights and contentions of the parties are reserved.

4. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

APRIL 06, 2018
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