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

\+ **<u>O.M.P.(I) (COMM.) 473/2017 & IA No. 14722/2017</u>**

C.S. INFRACONSTRUCTION LIMITED ..... Petitioner

Through Mr Neerja Kr Jain, Mr Amit Pawan, Mr Bharat Singh, Mr Akhil Sachhar, Mr Saurav Agarwal, Mr Akshat Srivastawa, Advocates.

versus

GOVERNMENT OF UTTAR PRADESH, PUBLIC WORKS DEPARTMENT & ORS. ..... Respondents

Through Mr Arun Aggarwal and Ms Jyoti Gautam, Advocate for Bank.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **26.02.2018**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the act'), *inter alia*, praying that the operation of the letter dated 10.11.2017 (hereafter 'the impugned communication'), whereby the respondent had invoked the bank guarantee furnished by the petitioner be stayed.

2. The petitioner was awarded the work of widening of the existing single lane carriageway to two lane carriageway with paved shoulder and strengthening of the Highway from km 0.000 to 50.675 of NH-730A in the State of Uttar Pradesh. Subsequently, the concerned parties entered into an agreement dated 28.02.2014 (hereafter 'the Agreement'). In terms of the Agreement, the petitioner furnished the performance bank guarantee (bearing no. 25161GPER001514 dated 28.02.2014) in the sum of

₹10,04,40,000/-.

3. According to the respondents, the petitioner failed to complete the work within the specified time; consequently, the respondents have terminated the Agreement and have also invoked the bank guarantee. These actions of the respondents have led the petitioner to file the present petition.

4. The petitioner claims that the termination of the Agreement as well as the invocation of the bank guarantee is wrongful. The petitioner admits that there has been delay in completion of the work; however, claims that the same is not for reasons attributable to the petitioner but wholly attributable to the respondents.

5. Plainly, this is not a controversy, which this Court is required to examine at this stage. Suffice it to state that there are no allegations of fraud which would warrant this Court to interdict invocation of the bank guarantee.

6. Having stated the above, it is also necessary to observe that after the petitioner had moved this Court, the petitioner had submitted that it was still ready and willing to perform the works and, accordingly, the matter had been adjourned on the last three occasions. It is also not disputed that certain meetings were held between the petitioner and the respondents whereupon the respondents did give petitioner an opportunity to execute further works.

7. Mr Bhardwaj, the learned counsel appearing for respondent nos. 1 and 2 contended that despite further opportunity, the petitioner was liable to complete the works. He has handed over a copy of the letter dated

25.02.2018 addressed by the consultant to the respondents indicating that the petitioner had achieved the following progress:-

Targeted				Achieved upto date progress
Major Item			Total	
DBM/ BM		4 km over new surface	4 km	2.5 Km (62.5%)
BC	6 km over existing open existing DBM	4 km over the DBM surface to be laid	10 km	8.15 Km (81.52%)

8. He states that in view of the above, it cannot be disputed that the petitioner has failed to complete the work despite further opportunity. On the other hand, the learned counsel appearing for the petitioner states that there is no possibility of the petitioner completing further works without the necessary work fronts being provided by the respondent.

9. As stated above, this Court is not required to examine the said controversy but since it is apparent that the petitioner was permitted to execute further works after the termination of the said Agreement, it would only be apposite that the respondents take an informed decision whether to permit further time to the petitioner to continue the works or to stand by the decision to terminate the Agreement. It would also be appropriate for the respondents to take a fresh decision whether to invoke the bank guarantee in the changed circumstances.

10. In view of the above, the impugned communication is set aside. This

will not preclude the respondents from issuing a fresh letter for invocation of the bank guarantee in question if the respondents so decides to invoke the said bank guarantee.

11. The petition and the pending application are disposed of with the aforesaid observations.

12. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 26, 2018
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