

\$~31

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

O.M.P.(I) (COMM.) 449/2018

M/S AMES IMPEX ELECTRICALS PVT. LTD. THROUGH: ITS
DIRECTOR Petitioner

Through: Mr.Vikas Mehta, Mr.Aproorv Khatar,
Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr.Tushar Sannu, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

04.12.2018

IA 16580/2018

Exemption allowed subject to all just exceptions.

IA 16581/2018

This is an application seeking permission to file lengthy list of
dates.

The application is allowed.

OMP(I)(COMM) 449/2018

1. This petition under Section 9 of the Arbitration and
Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been
filed by the petitioner praying for the following reliefs:

*“a) Grant an interim protection to the Petitioner by way of
an Order of stay on the encashment of Bank Guarantee
No.0505410BG0007272 for Rs.4,99,244/-; Bank Guarantee
No.0505410BG0007273 for Rs.8,48,714/-; Bank Guarantee
No.0505410BG0009045 for Rs.14,97,082/- and Bank
Guarantee No. 0505410BG0009788 for Rs.26,61,816/-*

furnished by the Petitioner, which are due to expire on 31/12/2018.”

2. Disputes having arisen between the parties in relation to the Supply Orders dated 09.10.2009 and 03.03.2010, the same were referred to for adjudication to a Sole Arbitrator. The Sole Arbitrator vide his Award dated 06.09.2018 had directed as under:

“I hereby, award a sum of Rs.1,58,28,204/- towards balance payment for 11 nos. of transformers as per Claimant letter dated 12.03.2016 alongwith EMD deposit of Rs.17,78,200/- and also an EMD deposit of Rs.15,41,898/- as per Claimant letter dated 12.03.2016 and also Bank Guarantee @ 5% amounting to Rs.26,61,816/- totaling Rs.2,18,10,118/- (Rupees Two Crores Eighteen Lacs Ten Thousand One Hundred & Eighteen only) in favour of the Claimant and against the Respondent.

I hereby, award a sum of Rs.64,14,299/- towards Counter claim No.1 and also an amount of Rs.64,49,444/- towards Counter Claim No.2 of the Respondent-NDMC in favour of the Respondent-NDMC.”

3. Counsel for the petitioner submits that apart from directing return of one of the Bank Guarantees, the Arbitrator has further directed the respondent to pay a sum of approximately Rs.1.90 crores to the petitioner. Therefore, eventually, it would be the respondent who has to pay money to the petitioner. He submits that though the petitioner is also aggrieved of the said Award, in light of the fact that it is the respondent who has to make payment to the petitioner, the respondent cannot go ahead and encash the Bank Guarantees.

4. On the other hand, counsel for the respondent has drawn my attention to the letter dated 30.11.2018 by which the bank has been requested to encash the Bank Guarantees and remit the amounts of the same to the respondent. A perusal of the said letter shows that the Bank Guarantees have been encashed as they were to expire on 31.12.2018 and the petitioner was not responding to the request of the respondent to extend the validity of the same.

5. In view of the above, I find merit in the submission made by the counsel for the petitioner. The respondents are restrained from encashing the Bank Guarantees mentioned hereinabove for a period of two months. The petitioner shall, however, keep the Bank Guarantee alive for a further period of six months from today.

6. This order is subject to any order being passed by a competent Court in any proceeding being initiated by either party challenging or seeking enforcement of the Award passed by the Sole Arbitrator.

7. The petition is disposed of in the above terms, with no order as to costs.

Dasti.

NAVIN CHAWLA, J

DECEMBER 04, 2018
RN