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

+ **O.M.P.(I) (COMM.) 529/2017**

M/S VASCON ENGINEERS LTD.

..... Petitioner

Through

versus

DIRECTOR GENERAL (MAP) & ORS.

..... Respondents

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

**CORAM:**

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

**ORDER**

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**12.03.2018**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying as under:-

“(i) restrain Respondent No.1, its employees, representatives, agents, etc. from invoking the performance BG i.e. Bank Guarantee being BG No. 0896609BG0000685 dated 24.09.2009 (issued by respondent no.2 bank/State Bank of India) and the retention BG being BG No. 0005BG00007712 dated 06.05.2011 (issued by respondent No.3/ICCI Bank) as described and detailed in ANNEXURE P-1 and ANNEXURE P-2 respectively appended to the instant petition together with the extended Bank Guarantees respectively.

(ii) direct the Respondent No.1 to release and/or return the Bank Guarantees in question i.e. the performance BG and retention BG as stated herein above;

(iii) restrain Respondent No.2 and respondent No.3, their employees, representatives, agents, etc. from encashing the

Bank Guarantees in question i.e. the performance BG and the retention BG, as described and detailed in Annexure P-1 and Annexure P-2 appended to the instant petition, if already invoked by the respondent No.1;

(iv) In the event this Hon'ble Court is of the view that BGs in question be kept alive till the disposal of arbitration proceedings, in the said event, the respondent No.1 be directed to meet the expenses of renewal of the said BGs.

(v) ex-parte ad-interim orders in terms of prayers (i) to (iii) and its due confirmation, pending the arbitration proceedings”

2. The disputes among the parties stem from a contract for construction of dwelling units including allied external services, at Aundh Kirkee, Pune. The petitioner states that the contract for the said works was awarded to the petitioner pursuant to a Letter of Acceptance (LOA) dated 17.09.2009. In terms of the contract between the parties, the petitioner had furnished the bank guarantees (the stay of which are sought by way of this petition). The petitioner claims that the work was completed and the defect liability period has also expired. Respondent no.1 has also given a completion certificate for the said works.

3. The learned counsel appearing for the petitioner submits that respondent no.1 has also indicated that it is willing to return the bank guarantees, provided the petitioner gave a no claim certificate. He states that it is not possible for the petitioner to do so, as the petitioner has certain claims against respondent no.1 and has also invoked the arbitration clause.

4. The learned counsel appearing for respondent no.1 states that the controversy raised by the petitioner can be considered by the Arbitral Tribunal. He, however, assures this Court that the bank guarantees in

question would not be invoked, provided that they are kept alive.

5. In view of the above, the *ad interim* order passed by this Court to the aforesaid effect, that is, on 18.12.2017, is made absolute and the same shall continue till the conclusion of the arbitral proceedings.

6. However, it is clarified that this order would not preclude the petitioner from moving the Arbitral Tribunal, as and when constituted, for seeking discharge of the said bank guarantees. It would be equally open for the respondents to seek vacation/variation of the above order.

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

**VIBHU BAKHRU, J**

**MARCH 12, 2018**

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