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

\+ ARB. A. (COMM.) 51/2017

RAIL VIKAS NIGAM LTD. ..... Appellant

Through: Mr Udit Seth, Advocate.

versus

RAILONE TARMAT DURGA (JV). ..... Respondent

Through: Ms Mani Gupta and Ms Ankita Bhadouriya, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **25.05.2018**

1. The appellant has filed the present appeal under Section 37 (2)(b) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') assailing the order dated 03.11.2017 (hereafter 'the impugned award') passed by the Arbitral Tribunal to the extent that it had directed the appellant to deposit the amount recovered from encashment of the bank guarantees submitted by the respondent in an Escrow account.

2. Mr Seth, the learned counsel appearing for the appellant states that the said order was passed in an application filed by the respondent under Section 17 of the Act seeking an order restraining the appellant from invoking the bank guarantees. The said application was not allowed and the appellant was permitted to encash the bank guarantees. However, the Arbitral Tribunal put a condition that the money recovered be kept in an Escrow account. Mr Seth states that this direction does not serve the

appellant's purpose as the appellant would not be able to access the said funds. He submits that the requirement of furnishing the unconditional bank guarantees was to ensure that the appellant is able to recover the said amount without recourse to any court or party. He also submits that keeping the funds in the Escrow account does not benefit the respondent and the respondent has also been deprived of the use of the said funds.

3. I have heard the learned counsel for the parties.

4. At the outset, it is necessary to observe that there is no apprehension that the respondent would not be able to recover any amount from the appellant if it prevails in the proceedings before the Arbitral Tribunal. Therefore, this Court finds no reason to interfere with the impugned order passed by the Arbitral Tribunal directing the funds to be kept in an Escrow account, which admittedly, is of no benefit to either party. Any apprehension, that the respondent may not be able to immediately recover the amount in case it prevails in the proceedings before the Arbitral Tribunal, can be put to rest by directing that in the event the respondent prevails in the arbitral proceedings, the petitioner shall, notwithstanding its remedy to assail the arbitral award, forthwith, deposit the said money with the Registry of this Court, so as to enable the respondent to access the same subject to any orders that may be passed at this stage.

5. The learned counsel for the appellant states that the appellant would have no objection to such an order being passed. In view of the above, the appeal is allowed. The direction issued by the Arbitral Tribunal to deposit the money in an Escrow account recovered from encashment of the bank guarantees is set aside. The appellant is at liberty to withdraw the same. This is subject to the condition that in the event the respondent prevails in

the arbitral proceedings, the petitioner shall forthwith without any protest and without recourse to any of its remedies, deposits the money with the Registry of this Court. Needless to state that such deposit will be subject to the further orders that may be passed at that stage.

6. The appeal is disposed of.

7. Order *dasti*.

VIBHU BAKHRU, J

MAY 25, 2018
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