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

+ ARB. A. (COMM.) 54/2017 & IA Nos.15293/2017 & 15587/2017

AMR INDIA LTD

..... Petitioner

Through: Mr Sudhanshu Batra, Sr. Advocate
with Mr Prashant Bhardwaj and Mr
Aditya Mishra, Advocates.

versus

NTPC LTD.

..... Respondent

Through: Mr Puneet Taneja, Advocate for
NTPC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.02.2018

1. The petitioner has filed the present petition under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning an order dated 16.12.2017 (hereafter 'the impugned order') passed by the Arbitral Tribunal, whereby the petitioner's application preferred under Section 17 of the Act directing stay of the invocation of the bank guarantee was rejected.
2. Mr Batra, the learned senior counsel appearing for the petitioner states that the encashment of the bank guarantee was liable to be stayed as there was settlement arrived at between the parties and despite the same, the petitioner sought to invoke the performance bank guarantee. It is apparent from the plain reading of the impugned order that the disputes sought to be raised by the petitioner are contentious disputes and it is well settled that the

bank guarantee cannot be stayed pending resolution of contractual disputes.

In *Hindustan Construction Co. Ltd. v. State of Bihar & Ors.*: (1999) 8

SCC 436, the Supreme Court observed as under:-

“8. Now, a Bank Guarantee is the common mode, of securing payment of money in commercial dealings as the beneficiary, under the Guarantee, is entitled to realise the whole of the amount under that Guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the Guarantee was given and the beneficiary. In contracts awarded to private individuals by the Government, which involve huge expenditure, as, for example, construction contracts, Bank Guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as "Advance" from time to time during the course of the contract as also to secure performance of the work entrusted under the contract. Such Guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the Government "Advance", the Guarantee is invoked and the amount is recovered from the Bank.”

3. In view of the above settled law, this Court finds no infirmity with the decision of the Arbitral Tribunal. The petition is, accordingly, dismissed. All the pending applications also stand disposed of.

VIBHU BAKHRU, J

FEBRUARY 23, 2018

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