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

\+ O.M.P.(I) (COMM.) 547/2017 & IA no.15472/2017

THERMAX LIMITED ..... Petitioner

Through: M Akhil Sibal, Sr. Advocate with Mr R. Dudhinder, Mr D. Vyas, Mr Anurag Tripathi and Ms Ekta Bhasin, Advocates.

versus

FERNAS CONSTRUCTION INDIA PVT. LTD. & ANR. ..... Respondents

Through: Mr N. Prashant Kumar Nair, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% **13.03.2018**

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

> "a) An order restraining the Respondent No.1 from invoking the Performance Bank Guarantees bearing No.28111 and 28311 dated 08.08.2011 duly extended and valid till 31.12.2017, in the sum of ₹2,68,38,549 and ₹1,00,43,671, respectively, issued by the Respondent No.2;
>
> b) An order restraining the Respondent No.1 from invoking the Advance Bank Guarantee no.812 dated 04.01.2012 duly extended and valid till 31.12.2017, in the sum of ₹65,00,000/-; AND
>
> c) An order restraining the Respondent No.2 from acting

> upon any demand raised by the Respondent No.1 for encashment of the Performance Bank Guarantees & Advance Bank Guarantees as mentioned above."

2. The petitioner had furnished the above bank guarantees in relation to a Purchase Order and Work Order, both dated 19.07.2011. The learned counsel appearing for the petitioner states that certain works have been executed. He states that the petitioner also has certain claims against respondent no.1 company, and it would cause irreparable injustice if respondent no.1 company is not interdicted from invoking the bank guarantees in question. He further states that respondent no.1 company has abandoned the works and in case the bank guarantees are invoked, it would be impossible for the petitioner to recover the said amounts. It is submitted that respondent no.1 company is a wholly owned subsidiary of a company based in Turkey and has only limited assets in this country.

3. The learned counsel appearing for the respondents states that the respondents have no objection to the aforesaid relief sought by the petitioner if the ad interim order, interdicting the encashment of the bank guarantees, passed by this Court on 21.12.2017 is continued till the Arbitral Tribunal, as and when constituted, can consider the question of such relief in an application under Section 17 of the Act.

4. In view of the submissions made by the learned counsel for the respondents, it is directed that the *ad interim* orders passed by this Court on 21.12.2017 shall continue to operate for a further period of ninety days from today.

5. In the meanwhile, the petitioner shall take effective steps for ensuring

that an Arbitral Tribunal is constituted. It would be open for the petitioner to approach the Arbitral Tribunal, as and when constituted, for such measures of interim protection as may be advised, including the relief as sought for in the present petition. It would be equally open for the respondents to seek vacation/modification of this order.

6. Needless to state that if any application is filed before the Arbitral Tribunal, the same would be considered by the Arbitral Tribunal uninfluenced by any order passed by this Court in these proceedings.

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

8. It is clarified that this order has been passed with the consent of the learned counsel for the parties.

VIBHU BAKHRU, J

MARCH 13, 2018
MK