

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION PETITION (L) NO.594 OF 2019
ALONG WITH
NOTICE OF MOTION (L) NO.1474 OF 2019**

Hariom Projects Pvt. Ltd.	...	Petitioner
Versus		
Union of India	...	Respondent

.....

Mr. Ashish Giri a/w Mr. Vasim Samlewale for the Petitioner/Applicant.
Mr. Sandeep Ladda a/w Mr. Yashodeep Deshmukh, Mr. Kedar Khambete
and Ms. Vaidehi Deshmukh for the Respondent.

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CORAM : R.D. DHANUKA, J.

DATE : 8 JULY 2019

P. C. :

. **Admit.**

2 Mr. Sandeep Ladda, learned Counsel appearing for the Respondent waives service.

3 Affidavit in reply shall be filed within two weeks from today with a copy to be served upon the Petitioner's Advocate simultaneously. Rejoinder, if any, shall be filed within one week thereafter with a copy to be served upon the Respondents' Advocate simultaneously.

Notice of Motion No.1474 of 2019

4 By this notice of motion, the Applicant-Petitioner seeks stay of the impugned award dated 18 March 2019 and subsequently modified by an order dated 10 April 2019. By a separate order passed by this Court in Commercial Arbitration Petition (L) No.594 of 2019, this Court has already admitted the petition.

5 In the arbitration petition, the Applicant has raised issue of jurisdiction of the learned Arbitrator based on the premises that the arbitrator was an employee of the Respondent on the date of his appointment and also on the date of award. Learned Counsel for the Respondent-Union of India does not dispute that the learned arbitrator was an employee of the Respondent at the time of his appointment and also on the date of rendering the impugned award. In my *prima facie* view, the learned Arbitrator fell under Sr.No.1 of Schedule 7, which was already inserted on the date of his appointment.

6 The Applicant is thus entitled to stay the operation and execution of the impugned award in terms of the prayer clauses (a) and (b), however, on the condition that the Applicant would renew the performance bank guarantee already furnished in favour of the Union of India for a period of two years from today and for like period after obtaining further orders from this Court depending upon the pendency of this petition and also on the condition that the Applicant shall deposit Rs.50,00,000 in this Court within eight weeks from today.

7 The renewal of the bank guarantee shall be done by the Applicant within a period of four weeks from today. It is made clear that if the conditions imposed by this Court are not complied with by the Applicant, the stay granted by this Court to stand vacated without further reference to this Court. It is made clear that no further extension would be granted to the Applicant. If the amount is deposited by the Applicant, the Respondent shall be at liberty to withdraw the said amount upon furnishing a bank guarantee of the Nationalized Bank within four weeks from the date of such deposit. The Respondent shall keep the said bank guarantee alive for a period of two years and for like period after obtaining further order depending upon the outcome of the pendency of the commercial arbitration petition. It is made clear that if bank guarantee is not furnished by the Respondent within the time prescribed, the learned Prothonotary and Senior Master of this Court shall invest the said amounts in the fixed deposit of a Nationalized Bank initially for a period of two years and for like period after obtaining further order from this Court depending upon the pendency of this petition

8 Notice of Motion is made absolute in the aforesaid terms. There will be no order as to costs.

(R.D. DHANUKA, J.)