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

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Date of decision: 11.10.2019

+ **O.M.P.(I) (COMM.) 336/2019**

RAGHUVIR BUILDCON PVT LTD

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Purvish Malkan and
Ms.Dharita Malkan, Advocates.

versus

IRCON INTERNATIONAL LIMITED

..... Respondent

Through: Mr. Gauhar Mirza, Mr. Prakhar Deep
and Mr. Nishant Doshi, Advocates.

+ **O.M.P.(I) (COMM.) 337/2019**

RAGHUVIR BUILDCON PVT LTD

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Purvish Malkan and Ms.
Dharita Malkan, Advocates.

versus

IRCON INTERNATIONAL LIMITED

..... Respondent

Through: Mr. Gauhar Mirza, Mr. Prakhar Deep
and Mr. Nishant Doshi, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No. 13981/2019 (for exemption) in O.M.P.(I) (COMM.) 336/2019

I.A. No. 13994/2019 (for exemption) in O.M.P.(I) (COMM.) 337/2019

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

O.M.P.(I) (COMM.) 336/2019

O.M.P.(I) (COMM.) 337/2019

3. These are petitions under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking a stay against encashment of Bank Guarantees issued by Karnataka Bank Limited, Vadodara Branch.
4. O.M.P.(I) (COMM.) 336/2019 relates to Bank Guarantee No.17793BG00038 dated 17.07.2017, extended on 14.12.2018 and further extended on 26.06.2019, furnished by the petitioner to the respondent and O.M.P.(I) (COMM.) 337/2019 relates to Bank Guarantee No. 17793BG00041 dated 31.8.2017 extended on 27.11.2018.
5. The parties had entered into a contract dated 26.09.2017. Disputes have arisen between the parties with respect to the said contract. The respondent had given a seven days' notice dated 13.09.2019 to the petitioner under clause 50.1 of the GCC requiring him to cure the alleged defaults. On 30.09.2019, a 48 hours' notice was given asking the petitioner to complete the work in accordance with the contract failing which the respondent was to initiate action towards termination of the contract.
6. After some hearing, the parties have agreed to appoint a Sole Arbitrator to adjudicate upon the disputes arising between the parties. Settlement has also been arrived at with respect to the invocation/encashment of the Bank Guarantees in question till the Arbitrator considers the application under Section 17 of the Act.

7. With the consent of the parties, the petitions are being disposed of as follows:
- (i) Hon'ble Mr. Justice Badar Durrez Ahmed, former Chief Justice of Jammu & Kashmir High Court (Retired) is appointed as Sole Arbitrator to adjudicate the disputes between the parties.
 - (ii) The learned Arbitrator will give disclosure under Section 12 of the Act.
 - (iii) The fee of the Sole Arbitrator will be as per Fourth Schedule of the Act.
 - (iv) Bank Guarantees issued by Karnataka Bank Limited Branch, Vadodara, bearing no. 17793BG00038 dated 17.07.2017 and 17793BG00041 dated 31.8.2017, have been encashed and the Demand Drafts are stated to be in possession of the respondent. The said Demand Drafts will not be encashed and will be deposited with the office of the Learned Arbitrator.
 - (v) Within 15 days of commencement of the arbitration proceedings, the petitioner will move an application under Section 17 of the Act for appropriate interim orders. Needless to say that the Arbitrator would be free to continue/modify/vacate the order passed by this Court today.
8. The demand draft lying with the respondent will not be encashed until further orders by the Arbitral Tribunal.

9. The address of the Learned Arbitrator is as under:

Hon'ble Mr. Justice Badar Durrez Ahmed,
Former Chief Justice, Jammu & Kashmir High Court
14, Friends Colony (West), Block-A, Mathura Road,
New Delhi-110065

10. The petitions are disposed of in the aforesaid terms.

11. Copy of the order be given *dasti* under the signatures of the Court Master.

I.A. No. 14140/2019 (for impleadment) in O.M.P.(I) (COMM.) 336/2019

I.A. No. 14139/2019 (for impleadment) in O.M.P.(I) (COMM.) 337/2019

12. In view of the order passed in the main petitions, the present applications have become infructuous and the same are hereby dismissed.

OCTOBER 11, 2019

AK/rd/

JYOTI SINGH, J

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