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

% **Date of decision: 14th October, 2019**
+ **O.M.P.(I) (COMM.) 343/2019**

RAGHUVIR BUILDCON PVT LTD

..... Petitioner

Through Mr. Yashasvi V., Mr. Purvish Malkan,
Ms. Dharita Malkan and Mr. Dhruv
Grag, Advocates.

versus

IRCON INTERNATIONAL LIMITED & ANR. Respondents

Through Mr. Gauhar Mirza and Mr. Nishant
Doshi, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No. 14207/2019 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking a stay against encashment of Bank Guarantee issued by Karnataka Bank Limited, Vadodara Branch.
2. The present petition relates to Bank Guarantee No. 17793BG00040 dated 31.08.2017 furnished by the petitioner to the Bank, which was extended on 10.10.2018, further extended on 08.04.2019 and thereafter extended on 08.08.2019.

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3. The parties had entered into a contract dated 26.09.2017. Respondent had given a seven days' notice dated 05.10.2019 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 would initiate action towards termination of the contract.

4. After some hearing, the parties have agreed to appoint a Sole Arbitrator to adjudicate upon the disputes arising between the parties. Learned counsel for the respondent submits that pursuant to the invocation of the Bank Guarantee, the Bank has already encashed the Bank Guarantee and Demand Draft prepared is lying in the possession of the respondent. Parties have mutually agreed that till the Arbitrator considers the application under Section 17 of the Act, the Demand Draft will not be encashed and would remain in the possession of the respondent.

5. With the consent of the parties, the following directions are passed:-

- (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 Guarantee issued by Karnataka Bank Limited Branch, Vadodara, bearing no. 17793BG00040 dated 31.08.2017, has been encashed and the Demand Draft is in possession of the respondent. The said Demand Draft will not be encashed and will be deposited with the Learned Arbitrator.
- (v) Within 15 days of commencement of the Arbitration Proceedings, 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.
6. The Demand Draft will not be encashed until further orders by the Arbitral Tribunal.
7. 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
8. The petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 14, 2019/yo/