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

% *Date of Judgment : 14th October, 2019*

+ **FAO(OS) 245/2017**

QUIPPO CONSTURCTION EQUIPMENT LTDAppellant

Through: Mr.Akshat Hansaria, Mr.Tushar
Bhatnagar, Ms.Etisha Srivastav and
Mr.Yash Kumar, Advts.

versus

JANARDAN NIRMAN PVT LTD. Respondent

Through: Mr.Surya Prakash, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL. 32384/2017 (delay)

1. This is an application filed by the appellant/applicant seeking condonation of delay of 100 days in filing the present appeal.
2. Learned counsel for the respondent has vehemently opposed the prayer made in the application and submits that should the application be allowed, the appellant must be burdened with costs.
3. Accordingly, the prayer made in the application is allowed and delay of 100 days in filing the appeal is condoned subject to payment of cost of Rs.15,000/- to be deposited with the Delhi High Court Middle Income Group Legal Aid Society.
4. The application stands disposed of.

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5. The appellant is aggrieved by an order dated 06.01.2017 passed by the learned Single Judge of this Court on an application being OMP (I) No.449/2015 filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) seeking interim relief post passing of an ex-parte award against the respondent. Learned counsel for the appellant submits that in case the interim protection is not granted, there is every likelihood that the respondent will dispose of all its assets to defeat the terms of the award decree which is in the sum of Rs.78,78,533/- alongwith interest thereon.
6. Learned counsel for the respondent submits that the ex-parte award was challenged before the District Judge, Alipore Court, West Bengal. An objection with regard to territorial jurisdiction was raised by the appellant, which was allowed, only to be set aside by the High Court. A Special Leave Petition has been filed in the said matter wherein judgment has been reserved. Learned counsel for the respondent further submits that should it be decided in the proceedings before the Supreme Court that the Courts in Delhi do not have territorial jurisdiction, then a petition under Section 9 of the Act would not lie in Delhi.
7. We have heard learned counsel for the parties.
8. Learned Single Judge has dismissed the petition filed under Section 9 of the Act primarily on the ground that as per the agreement between the parties, an arbitrator was to be appointed by the Construction Industry Arbitration Council, New Delhi; and that one Mr. L. C. Jain was appointed as the Sole Arbitrator by the appellant herein. The Single

Judge was persuaded not to grant interim relief having taken into account that the respondent had not participated in the appointment of the Arbitrator and it appeared that the appointment was unilateral and without the consent of the respondent. Para 4 of the order passed by the Single Judge reads as under:

“4. Learned counsel for the Petitioner drew the attention of the Court to the arbitration clause in the agreement between the parties which required the Arbitrator to be appointed by Construction Industry Arbitration Council, New Delhi. It is seen that one Mr. L.C. Jain was appointed as a sole Arbitrator. There is nothing to show that the Respondent participated in the appointment of Mr. L.C. Jain. For all practical purposes, it appears that the appointment was unilateral and without the consent of the Respondent.”

9. We find no infirmity in the view taken by the Single Judge; more so, we find that as of now there is no clarity as to whether the Courts in Delhi would have jurisdiction over the matter or not. Accordingly, we find no grounds to entertain this petition at this stage. In case there is any change in the circumstances, the appellant would be at liberty to seek such remedy as available, in accordance with law
10. The appeal stands disposed of.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 14, 2019

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