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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) (COMM) 62/2020, CM APPL. Nos.10852/2020,
10853/2020 & 10854/2020

M/S SKYLINE ENGINEERING CONTRACTS

(INDIA) PVT. LTD.

..... Appellant

Through: Mr. Tanmay Mehta, Advocate with
Mr. Nikhil Kohli, Ms. Ritika Kohli
and Mr. Rupesh Gupta, Advocates

versus

M/S CANARA BANK LTD & ANR

..... Respondents

Through: Mr. Gaurav Mitra, Advocate with
Ms. Manmeet Kaur and Mr.
Raghuveer Kapur, Advocates for R-
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CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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13.05.2020

The present matter has been taken-up for hearing by way of Video-Conferencing on account of lockdown due to COVID-19.

The present appeal instituted on behalf the Appellant M/s Skyline Engineering Contracts (India) Pvt. Ltd., assails the final order dated 08.05.2020, rendered by a learned Single Judge of this Court in OMP (I) (COMM) No.91/2020 under Section 9 of the Arbitration & Conciliation Act 1996, (hereinafter referred as the 'said Act'), whereby the learned Single

Judge was pleased to permit respondent No.2/M/s. Raheja Developers Pvt. Ltd., to encash the Bank Guarantees furnished by the appellant.

It is an admitted position that, subsequent to the passing of the impugned final order dated 08.05.2020, the subject Bank Guarantees have been encashed and the proceeds thereof stand released to respondent No.2 on 12.05.2020.

It is further a matter of record that the appellant had instituted OMP (I) (COMM) No.91/2020 under Section 9 of the said Act praying as follows:-

“In the light of the facts and circumstances of the present case and submissions made hereinabove, the Applicants most respectfully pray that this Hon’ble Court may be pleased to:

- a) Pass an ex-parte ad-interim order restraining the Respondent No.1 and 2 from encashing the Bank Guarantee Nos.081068 and 081069;
- b) Pass an order directing the respondent No.1 and 2 to return the Bank Guarantee Nos.081068 and 081069 to the petitioner;
- c) Pass any order(s), direction(s) as may deem fit and proper in the interest of justice.”

A perusal of the above prayer clause leaves no room for doubt that the reliefs prayed for therein have been rendered infructuous owing to the subsequent development i.e. the encashment of the subject Bank Guarantees.

In view of the foregoing, Mr. Tanmay Mehta, learned counsel appearing on behalf of the appellant states that, he does not press the present appeal, as the same has been rendered infructuous, but seeks liberty from this Court to institute an appropriate application, including but not limited to an application under Section 17 of the said Act, before the learned Arbitrator, who has entered upon the subject reference.

Leave to withdraw the present appeal, the same having been rendered infructuous, is granted.

The present appeal is dismissed as withdrawn and disposed of accordingly. The pending applications also stand disposed of.

Needless to state that the appellant is at liberty to institute an appropriate application, including but not limited to an application under Section 17 of the said Act, before the learned Arbitrator, in accordance with law; and the Arbitrator shall be at liberty to adjudicate and determine the same without being influenced in any manner by any observation made in the impugned order dated 08.05.2020.

A copy of this order be uploaded on the website of this Court forthwith.

SIDDHARTH MRIDUL, J

ANUP JAIRAM BHAMBHANI, J

MAY 13, 2020

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