

Via video conferencing

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 290/2020**

JMC PROJECTS INDIA LIMITED

..... Petitioner

Through: Mr. Gourab Banerji, Sr. Adv. with
Mr. Ayush Agrawal, Mr. Vikrant Singh Bloria,
Mr. Samith Sagarahalli, Dr. Sunil Mittal,
Ms. Anu Tiwari, Mr. Subhro Prokash Mukherjee
and Ms. Ishita Mishra, Adv.
Ms. Charul Mathur, Adv.

versus

ENGINEERS INDIA LIMITED

..... Respondent

Through: Mr. Abhinav Vashisht, Adv..

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **17.09.2020**

I.A. 8234-35/2020(exemptions)

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 290/2020

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('the Act') seeking the following reliefs:-

- a) *Pass an order directing the Respondent to return the Bank Guarantee 61/2010 dated 14 May, 2010 to the petitioner in view of the Award dated 09 July, 2018;*
- b) *Pass an order restraining / injuncting the Respondent –EIL from invoking the Bank Guarantee*

61/2010 dated 14 May 2010 furnished by the Petitioner or from receiving any amounts thereunder pending adjudication of the application under Section 34 of the Arbitration and Conciliation Act as amended from time to time.

c) Pass ex-parte ad-interim order in terms of prayer a) and b) above.

d) pass any other further order (s) /direction (s) in favour of the Petitioner as this Hon'ble Court may deem fit in the facts and circumstances of the case.

3. At the very outset, learned senior counsel for the petitioner submits that the prayers in the present petition relate to a performance bank guarantee furnished by the petitioner at the time of entering into the contract dated 14.05.2020 with the respondent, which guarantee has been extended from time to time. This extension has been carried out by the petitioner, notwithstanding an award in its favour passed on 09.07.2018 holding the respondent liable to pay the petitioner a sum of INR 28,18,52,965/-. He further submits that even though this award has been stayed by this Court in the respondent's petition under Section 34 of the Act being OMP (COMM)458/2018, the respondent cannot insist, in the light of the findings in the award, that the petitioner should continue to endlessly renew the performance bank guarantee.

4. At this stage, it has been put to the learned senior counsel for the petitioner as to why the reliefs sought in the present petition ought not to be considered in the Section 34 proceedings which this Court is presently seized of, especially keeping in view the fact that the

operation of the award was stayed in those very proceedings on 10.01.2019.

5. After some arguments, learned senior counsel for the petitioner seeks leave to withdraw the present petition with liberty to move an appropriate application in this regard in OMP (COMM) 458/2018.

6. The petition stands dismissed as not pressed with liberty to the petitioner to prefer an appropriate application, on all permissible grounds including grounds raised in the present petition, within a period of ten days.

REKHA PALLI, J.

SEPTEMBER 17, 2020

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