

\$~17(2021)

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

% *Date of decision: 29.09.2021*

+ **FAO(OS) (COMM) 127/2021 & CM Nos.34234-35/2021**

**GARUDA CONSTRUCTION AND
ENGINEERING PVT LTD**

..... Appellant

Through : Mr. Sanjeev Sindhvani, Sr. Adv. with
Mr. Sandeep Bajaj, Mr. Soayib
Qureshi, Ms. Aditi Pundhir, Ms.
Arshiya Qasba, Advs.

versus

BRILLIANT ELEVATOR INDIA CO PVT LTD Respondent

Through : Mr. Vinam Gupta, Ms. Phalguni
Nigam and Mr. Aamir Siraj, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL)

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM No.34235/2021

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 127/2021 & CM No.34234/2021 [*Application filed on
behalf of the appellant for interim relief*]

2. This matter has been received on transfer.

3. Issue notice. Mr. Vinam Gupta, Advocate accepts notice on behalf of
the respondent.

4. With the consent of the learned counsel for the parties, the appeal is
taken up for hearing and final disposal, at this stage itself.

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Signing Date: 09.10.2021
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5. This appeal is directed against the order of the learned single judge, dated 21.09.2021, passed in O.M.P.(I) (COMM.) No.253/2021.

5.1. The impugned order has been passed in a petition filed by the respondent, under Section 9 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

5.2. In short, the learned single judge has permitted the respondent, to implead the Delhi Police.

6. We have heard Mr. Sanjeev Sindhvani, learned senior counsel, who appears on behalf of the appellant, for a fair bit of time, and also heard Mr. Vinam Gupta, who appears on behalf of the respondent, with regard to the maintainability of the appeal.

6.1. After some arguments, Mr. Sindhvani says that, the only reason that the appellant has approached this Court is, because of certain observations made in the impugned order, which are likely to impact the appellant in the pending Section 9 petition moved by the respondent.

7. We may also note that Mr. Gupta, while pressing his petition with regard to the maintainability of the appeal, has relied on paragraph 19 of the judgment of the Supreme Court, rendered in **BGS SGS SOMA JV v. NHPC Ltd.** (2020) 4 SCC 234.

7.1 On the other hand, Mr. Sindhvani has relied upon a judgment of the Division Bench of this Court dated 30.05.2018, passed in FAO(OS)(COMM) No.67/2017, titled **Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd.**

8. We may also note that, in paragraph 59 of the judgment in **BGS SGS SOMA JV** case, the Supreme Court has observed that, they do not approve

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the ratio of the judgment rendered in *Antrix Corporation Ltd.* case.

8.1. Mr. Sindhwani says that, the Special Leave Petition preferred qua *Antrix Corporation Ltd.* is pending, and thus, the matter is still at large.

9. However, Mr. Sindhwani, after some arguments, says that, he would like to withdraw the appeal, with liberty to place the appellant's point of view as also its contentions, before the learned single judge in the pending Section 9 petition lodged under the 1996 Act.

9.1. In our view, this, at the moment, is the best way forward.

10. Accordingly, the appeal is dismissed as withdrawn, with liberty to the appellant to advance all the contentions before the learned single judge, including the contention that, the observations made in the order dated 21.09.2021, with regard to passing of title, and that there is a "*prima facie*" case of cheating made out, requires a relook.

11. Consequently, pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 29, 2021

aj

[Click here to check corrigendum, if any](#)