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

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Judgment delivered on : 28.03.2023

+ FAO(OS) (COMM) 34/2023, CM APPL. 7933/2023, CM APPL. 7934/2023, CM APPL. 7935/2023, CM APPL. 8651/2023, CM APPL. 8655/2023, CM APPL. 11073/2023 & CM APPL. 8671/2023

**SHAPOORJI PALLONJI AND COMPANY
PRIVATE LIMITED**

..... Appellant

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Appellant:

Mr. Sandeep Sethi, Mr. Ciccu Mukopadhaya, Senior Advocates with Mr. Saurav Agrawal, Mr. Saad Sherwani, Mr. Mayank Mishra, Mr. Mayank Mishra, Mr. Chirag Sharma, Ms. Sakshi Tibrewal, Ms. Shreya Sethi, Mr. Anmol Dhindsa, Mr. Ajay Sharma, Mr. Vikram Singh Dalal and Mr. J. Amal Anand, Advocates

For the Respondent:

Mr. Chetan Sharma, ASG and Mr. Apoorv Kurup, CGSC with Ms. Swati Bhardwaj, Mr. Anit Gupta, Ms. Nidhi Mittal, Ms. Aparna Arun, Mr. Ojaswa Pathak, Mr. Saurabh Tripathi, Advocates with Mr. Dashrath Panwar, Executive Engineer & Senior Manager, CPWD

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 15.02.2023 whereby the application of the appellant under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) seeking a restraint on the respondent from invocation of the bank guarantee bearing No. SBI-0999519BG0000276 amounting to Rs. 55,04,04,261/- (Rupees Fifty Five Crores Four Lakh Four Thousand Two Hundred and Sixty-One only) issued by the State Bank of India, has been dismissed.

2. When the appeal was filed and listed before this Court on 16.02.2023, the impugned order dated 15.02.2023 had not been made available to the parties or uploaded on the website.

3. Accordingly, this Court by order dated 16.02.2023 directed the concerned bank to produce in Court the pay order that had already been prepared in favour of the respondent.

4. On 20.02.2023, the Assistant General Manager of the State Bank of India produced a pay order in the sum of Rs. 55,04,04,261/- dated 15.02.2023. Said pay order was once again produced in Court on 22.02.2023 by the Assistant Manager, SBI. The pay order was taken over and kept in safe custody of the concerned Registrar of this Court.

5. Learned Senior Counsels appearing for the parties submit that the Arbitral Tribunal has since been constituted and had its first sitting on 24.03.2023.

6. After some arguments, learned Senior Counsel for the appellant seeks leave to withdraw the appeal reserving the right of the appellant to approach the Arbitral Tribunal by way of an application under Section 17 of the Act.

7. Learned Senior Counsel for the appellant prays that some interim arrangement be made to enable the appellant to seek restitution of the amount in case the Tribunal were to grant interim protection sought by the appellant under Section 17 of the Act.

8. In view of the above, the following directions are issued:-

- i) The appeal is dismissed as withdrawn with liberty as prayed for.
- ii) The pay orders referred to herein above is directed to be released to the respondent.
- iii) On encashment of the pay order/demand draft, the respondent shall keep the amount secured for a period of three weeks to enable the appellant to approach the Tribunal and for the Tribunal to pass an appropriate direction, if any, under Section 17 of the Act.
- iv) It is clarified that on the expiry of the period of three

weeks or on appellant approaching the Tribunal and the Tribunal taking up the application under Section 17 of the Act for consideration, whichever is earlier, the direction to the respondent to keep the aforesaid amount secured for a period of three weeks shall lapse.

v) It would be open to the Tribunal to pass appropriate orders under Section 17 of the Act without being influenced by anything stated in these proceedings in accordance with law.

vi) It would also be open to the Tribunal to consider the prayer of the appellant for restitution of the amount in case the Tribunal is so inclined at the stage of passing appropriate orders under Section 17 of the Act. Needless to state that it would be open to the respondent to oppose the grant of orders of protection to the appellant under Section 17 of the Act or restitution of the amount in accordance with law.

vii) The tribunal would consider the request of the parties without being influenced by anything stated either in these proceedings or in the proceedings under Section 9 of the Act.

9. In view of the above, learned Senior Counsel for the appellant submits that the appellant does not wish to press the petition under Section 9 of the Arbitration & Conciliation Act, 1996 any further and accordingly seeks leave to withdraw the same without prejudice to the right to approach the Tribunal under Section 17 of the Act.

10. In view of the above, the petition under Section 9 of the Act being OMP (I) (COMM) 6/2023 is dismissed as withdrawn.
11. The appeal is disposed of in the above terms.
12. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

MARCH 28, 2023
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