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

+ **O.M.P.(I) (COMM.) 5/2024, I.A. 222/2024 & I.A. 223/2024**

**M/S PHOOLTAS TRANSRAIL LIMITED AND
ANR**

.... Petitioners

Through: Mr. Sachin Mitra, Mr. Sanchai
Chakraborty, Mr. Gaurav Gupta,
Ms. Rajshree Jaiswal and Ms. S.
Kushi, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vikrant N. Goyal, Mr. Satvik
Goyal, Mr. Jaswant Rai Aggarwal
and Mr. Nitin, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

05.01.2024

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1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 [“the Act”] for interim measures of protection pending arbitral proceedings under contracts dated 19.03.2010 and 05.07.2013, for provision of Electric/Diesel Hydraulic Mast Erection Machine Vehicle (MEMV), mounted on Self Propelled Vehicle for Operation on Broad Gauge (1676 mm) [“the Contracts”].

2. The petitioner essentially seeks a direction upon the respondents to release a performance bank guarantee amounting to Rs.85,73,653/-, and to injunct action pursuant to a communication dated 19.10.2023, by which the respondents cancelled the contract dated 19.03.2010.

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3. The respondents by a communication dated 29.11.2023 had decided not to encash the bank guarantee until 26.12.2023 to enable the parties to sort out the issues. Subsequently, the petitioner approached this Court by way of W.P.(C) 16508/2023 [*M/S Phool Tas Transrail Limited and Anr. vs. Union of India and Ors.*], in which an order dated 22.12.2023 was passed, relegating the petitioner to its contractual remedies while recording the submission of Mr. Vikrant N. Goyal, learned counsel for the respondents, that the bank guarantee would not be encashed until 08.01.2024.

4. During the course of hearing, it transpires that further developments have taken place. Mr. Gaurav Mitra, learned counsel for the petitioner, relies upon a subsequent communication dated 29.12.2023 by which the petitioner has been given time until 29.01.2024 to deposit the amount of Rs. 97,98,460/- with the respondents, failing which the bank guarantee would be forfeited. Mr. Goyal states that the time for deposit has in fact been extended until 05.02.2024, and the Railways proposes to encash the bank guarantee only after that.

5. Learned counsel for both the parties state upon instructions that the parties are agreeable to a reference to arbitration in these proceedings itself, so that the disputes and the petitioner's request for interim relief can be considered by the learned Arbitral Tribunal.

6. For the aforesaid reasons and with the consent of learned counsel for the parties, the petition is disposed of with the following directions:

- a. Disputes between the parties under the Contracts dated 19.03.2010 and 05.07.2013 are referred to arbitration of Mr. O.P. Saini, former District and Sessions Judge [Tel.:- 9717196857].



- b. The arbitration will be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
 - c. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
 - d. If the respondent has counter claims, those may also be placed before the learned arbitrator in accordance with law.
 - e. The parties may make an application under Section 17 of the Act before the Arbitrator for interim protection and seek early hearing of the said application. The learned Arbitrator is requested to consider the aforesaid application, at least on the question of *ad-interim* protection, prior to 05.02.2024.
 - f. In the meanwhile, the respondent is bound down to Mr. Goyal’s submission that the bank guarantee will not be encashed until 05.02.2024.
7. It is made clear that this Court has not adjudicated the rights and contentions of the parties even on a *prima-facie* basis, and all claims, counter-claims and defenses are left open for adjudication by the learned Arbitrator.
8. The petition is disposed of with the aforesaid directions.

PRATEEK JALAN, J

JANUARY 5, 2024
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