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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 69/2024, I.A. 4921/2024, I.A. 4922/2024**
GAYATRI PROJECTS LIMITED THROUGH THE RESOLUTION
PROFESSIONAL MR SAI RAMESH KANUPARTHI

..... Petitioner

Through: Mr. Angad Mehta, Mr. Arsh, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.

..... Respondents

Through: Mr. Santosh Kumar, Mr. Adithya
Ramani, Advs. for NHAI.
Mr. Santosh Kumar Rout, Mr. Kumar
Satish Shah, Advs. for R-2/PNB
(VC).

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
01.03.2024

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1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act with the following prayer:

“a. Allow the present petition and restrain Respondent No. 1 from taking any action pursuant to the impugned communication dtd. 24.01.2024 received by the Petitioner on 19.02.2024 under a covering letter dtd. 10.02.2024,

b. Allow the present petition and restrain the Respondents from invoking/encashing the Petitioners performance bank guarantee dtd. 03.02.2018 bearing no. 4437ILG002218 in the sum of INR 15,87,00,000/-, Performance Bank Guarantee bearing no.4437ILG001718 dtd.22.04.2021 in the sum of INR 17,49,00,000/- and the additional



performance bank guarantees bearing no.'s 4437ILG001618 (dtd. 12.01.2018) and 4437ILG002318 (dtd. 05.02.2018) in the sum of INR. 22,17,03,000/- (Package-I BG) and INR 8,12,67,654/- (Package-II BG) respectively,

c. Grant ex-parte ad interim reliefs in terms of prayers (a) and (b),

d. Pass any further orders as may be required”

2. Learned counsel for the petitioner in his preliminary submissions has taken the court through the agreement and further documents wherein he showed that the work could not be completed due to bad drainage system on a stretch of the existing highway which was required to be maintained by the contractor till the completion of the pipes.
3. Learned counsel for the petitioner further submits that the respondent has already encashed the bank guarantee of Rs. 18.5 Crores in 2023 and the petitioner apprehends that the respondent may further encash the bank guarantee of Rs. 50 Crores were lying with the respondent.
4. Issue notice.
5. Mr. Santosh Kumar, learned counsel for the respondent has accepted the notice.
6. Learned counsel for the respondent at the outset has submitted that the contract was awarded on 01.02.2018 and the petitioner was required to complete the work by June 2020 and even in February 2024 1/3rd work is to be completed.
7. Learned counsel has also submitted that the plea taken by the petitioner regarding the bad drainage system is totally incorrect and also submits that there is a bank guarantee of only Rs. 23 Crores.



8. However, during the course of submissions, both the learned counsels have consented that the present petition may be converted into a petition under Section 11 of the Arbitration and Conciliation Act.
9. It has further been agreed that the present petition may be converted into Section 17 and the learned Arbitrator may be requested to dispose of the same within two weeks.
10. In view of the submissions made and with the consent of the parties, the present petition is converted into petition under Section 11 of the Arbitration and Conciliation Act.
11. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
 - i. The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii. Ms. Justice Indira Banerjee, Former Judge, Supreme Court of India (Mobile No. 9560808777) is appointed as an Arbitrator to adjudicate the disputes between the parties.
 - iii. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the DIAC Schedule or as the parties may agree.
 - iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v. It is made clear that all the rights and contentions of the parties,



including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

- vi. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 is converted into application under Section 17 of the Arbitration and Conciliation Act. The same shall be placed before the learned Sole Arbitrator is requested to dispose of the said application within two weeks as per law.
- vii. The parties shall approach the learned arbitrator within two weeks from today.

12. Copy of order be given *dasti* to the parties.

DINESH KUMAR SHARMA, J

MARCH 1, 2024/AR..