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

+ **O.M.P.(I) (COMM.) 84/2024**

DILIP BUILDCON LIMITED

..... Petitioner

Through: Mr.Jayant Mehta, Sr.Adv. with
Mr.Dhirendra Negi, Ms.Pragya
Chauhan, Ms.Tanya Tiwari and
Mr.Ashish Suman, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.

..... Respondents

Through: Mr.Santosh Kumar and Mr.Kushagra
Aman, Advts. for NHAI.
Mr.Ankit Raj, Panel Advocate, PNB
with Mr.RAjnish Kumar and
Mr.Ankur Kashyap, advts. for R-2.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.03.2024

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I.As. 6360-61/2024 (Exemptions)

1. Exemptions are allowed subject to all just exceptions.
2. The applications stand disposed of.

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

(a) pass an ex-parte ad interim order of injunction restraining Respondent No. 1 from invoking or encashing any amount under the Bank Guarantee No. 145919ILPER006 dated 24 June 2019 (as extended on 27 February 2024) for Rs.1,10,00,000 (One



Crore Ten Lakh only); and

(b) pass an ex-parte ad interim order of injunction restraining Respondent No. 1 from invoking or encashing any amount under the Bank Guarantee No. 145919ILPER007 dated 24 June 2019 (as extended on 27 February 2024) for Rs.91,30,000 (Ninety One Lakh Thirty Thousand only);

(c) pass an ex-parte ad interim order of injunction restraining Respondent No. 2 from paying any amount under the Bank Guarantees No.145919ILPER006 and 145919ILPER007 both dated 24 June 2019 (as extended on 27 February 2024) to Respondent No. 1;

(d) confirm the orders passed in terms of prayer (a) to (c) after notice to the Respondents;

4. Mr.Jayant Mehta, learned senior counsel appearing for the petitioner has argued in detail and invited the attention of the court to the various clauses of the agreement. Learned senior counsel submits that two bank guarantees i.e. Bank Guarantees No. 145919ILPER0006 and 145919ILPER0007 dated 24 June 2019 issued by the Respondent No. 2 Bank (on behalf of the Petitioner) are with the respondents.
5. Learned senior counsel further submits that there is an apprehension that the respondents may encash these bank guarantees arbitrarily and illegally.
6. Issue notice. Mr Santosh Kumar, learned counsel for respondent no.1 and Mr.Ankit Raj, learned counsel for respondent no.2/PNB had accepted notice. Learned counsel submits that no stay may granted as under clause 17.2 they have found further defects and as per the clause, the defect liability period shall automatically stand extended.



7. However, at this stage without going into the rival contentions, learned counsels for both the parties have agreed that the present petition may be treated as a petition under Section 11 of the Arbitration and Conciliation Act and an arbitral tribunal of three arbitrators may be appointed.
8. Learned senior counsel for the petitioner has submitted that the present application may also be forwarded to the learned arbitrator and may be converted into under Section 17 of of Arbitration and Conciliation Act. Till that time, the respondent may be directed not to take any coercive steps.
9. Learned counsels for the respondents have vehemently opposed the same. Learned counsel submits that various communications have been withheld from the court and therefore no relief may be granted.
10. I consider that without going into the merits of the case, the application may be forwarded to the learned arbitral tribunal. the learned arbitral tribunal is requested to dispose of the present application within two weeks. However, till then no coercive steps shall be taken. However, it is made clear that the learned arbitral tribunal shall decide the question involved without being prejudiced or influenced by any direction of this court. The learned arbitral tribunal shall decide the same independently.
11. The panel consist of a three-member Arbitral Tribunal. Accordingly, Justice (Retd.) Manmohan Singh (Former Judge of Delhi High Court), (Mobile No. 9717495001) is appointed as the nominee arbitrator of the Petitioner, Justice (Retd.) V. Ramasubramanium, (Former Judge of the Supreme Court) (Mobile No.9618099696) is appointed as the nominee



arbitrator of the Respondent and Justice (Retd.) R.K.Gauba (Former Judge of Delhi High Court) (Mobile No.9650411919) is appointed as the arbitrator by the Court.

12. 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 A&C Act.
13. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
14. 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.
15. The parties shall approach the learned arbitrator within two weeks from today.
16. The petition is disposed of in the above terms.
17. Copy of order be given dasti, under the signature of the court master.

DINESH KUMAR SHARMA, J

MARCH 18, 2024

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