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

+ **ARB. A. (COMM.) 28/2024 & I.As. 10881-84/2024**

UNION OF INDIA

..... Petitioner

Through: Mr. Apoorv Kurup, CGSC with
Mr. Gurjas Singh Narula,
Advocate.

versus

SHAPOORJI PALLONJI AND COMPANY

PRIVATE LIMITED

..... Respondent

Through: Mr. Jaiyesh Bakshi, Mr. Ravi
Tyagi, Mr. Mayank Mishra, Ms.
Mannilan Sidhu, Mr. Chirag
Sharma, Ms. Sudiksha Saini, Ms.
Saksha Jha, Mr. Shikhar Misra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **15.05.2024**

1. By way of this appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ["the Act"], the Union of India ["the Union"] assails an order dated 28.09.2023 passed by a learned Arbitral Tribunal in an application of the respondent under Section 17 of the Act.
2. The arbitral proceedings arise out of an agreement dated 12.06.2019 for construction of a hospital in Dr. Y.S. Parmar Medical College at Nahan, Dist. Sirmaur, Himachal Pradesh.
3. The respondent herein is the claimant in the arbitral proceedings.
4. In the anticipation of arbitration, the respondent filed a petition under Section 9 of the Act before this Court (O.M.P(I)(COMM) 1/2023). The respondent sought an injunction against invocation of a performance bank guarantee and mobilization advance bank guarantees furnished by it.



The bank guarantees had been invoked by the Union by a letter dated 31.12.2022. While issuing notice, the Court by order dated 04.01.2023 enjoined the Union from encashment of the bank guarantees. By order dated 24.07.2023 in ARB.P. 673/2023, the Court appointed the presiding arbitrator and the arbitral tribunal stood constituted. O.M.P.(I)(COMM) 1/2023 was disposed of on 24.07.2023, treating the petition under Section 9 of the Act as an application under Section 17 of the Act before the learned Arbitral Tribunal.

5. By the impugned order dated 28.09.2023, the learned Arbitral Tribunal has continued the order of injunction until adjudication of claims and counter claims subject to the bank guarantees being kept alive for the duration of the arbitration proceedings.

6. Mr. Apoorv Kurup, learned Central Government Standing Counsel for the Union submits that the learned Arbitral Tribunal has erred in entering into the questions of *prima facie* case, balance of convenience and irretrievable injury in examining whether an injunction is required to be granted against a bank guarantee. He submits that the analysis of the underlying disputes, in the principal contract between the appellant and the respondent, is not germane to deciding whether an order of injunction is required to be granted against an unconditional and irrevocable bank guarantee, which is an independent tripartite contract between the parties and the bank.

7. On the analysis of the learned Tribunal with regard to the invocation of the bank guarantee, Mr. Kurup submits that the injunction has been granted on a finding that the invocation was not in terms of the guarantee. Although he submits that the invocation had been clarified by



a subsequent e-mail dated 05.01.2023 and brought in line with the guarantees, he further submits that in such circumstances, the Union ought to have been granted liberty to invoke the guarantees afresh.

8. Having heard Mr. Kurup, I am of the view that these are contentions which can be raised before the learned Arbitral Tribunal if the Union wishes to invoke the bank guarantee afresh. The order of injunction has been in place since 04.01.2023 and even the impugned order of the Tribunal was passed more than seven months ago.

9. Mr. Kurup is right in saying that the Tribunal's discussion on the impugned invocation of the bank guarantees proceeds on the basis of the earlier invocation, which was found to be inconsistent with the terms of the guarantee itself. However, I do not read the order to suggest that the Tribunal has arrived at a decision that the Union must be enjoined from any future invocation, even if it is in terms of the bank guarantee.

10. This Court has repeatedly emphasized that the jurisdiction under Section 37 of the Act, against orders under Section 17 is to be exercised very sparingly.¹ Having regard to this position, and the remedy available to the Union, I do not consider it appropriate to entertain this appeal, particularly at this belated stage.

11. The appeal is, therefore, disposed of with liberty to the Union to seek appropriate orders from the learned Arbitral Tribunal in accordance with law, if so advised. All rights and contentions of the parties are left

¹ See judgments of Coordinate Benches of this Court in *Augmont Gold (P) Ltd. v. One97 Communication Ltd.*, (2021) 4 HCC (Del) 642, paragraph 73; *Tahal Consulting Engineers India (P) Ltd. v. Promax Power Ltd.*, 2023 SCC OnLine Del 2069, paragraph 38; and *Supreme Panvel Indapur Tollways (P) Ltd. v. National Highways Authority of India*, 2022 SCC OnLine Del 4491, paragraphs 29-33.



open for consideration of the learned Tribunal.

12. All pending applications also stand disposed of.

MAY 15, 2024
"Bhupi"/

PRATEEK JALAN, J