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

+ O.M.P.(I) (COMM.) 331/2023, I.A. 20286/2023

M/S ADVANCE INRASTRUCTURES PVT. LTD.

..... Petitioner

Through: (Appearance not given)

versus

M/S. GAIL(INDIA) LIMITED & ANR.

..... Respondents

Through: Mr.Nishant Awana, Ms.Rini Badori
and Mr.Trupati, advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

15.01.2024

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Learned counsel for the respondents submits against the order dated 13.10.2023, FAO(OS)(COMM) 234/2023 was filed. Learned counsel submits that during the proceedings in FAO(OS)(COMM) 234/2023, learned counsel for the petitioner (respondent herein) made a statement that they shall withdraw the present petition reserving their rights to such remedies as may be available in law at a later stage.

The order dated 13.10.2023 is reproduced as below:

“1. Appellant impugns order dated 13.10.2023, whereby in a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), a learned Single Judge of this Court has restrained the appellant from encashing the Performance Security Bank Guarantee dated 19.07.2021 as



amended on 26.09.2023.

2. Learned senior counsel appearing for the appellant submits that the petition under Section 9 of the Act was not maintainable inasmuch as the Central Bureau of Investigation has registered an FIR alleging corrupt practices and since an FIR was registered, the same became an excepted matter in terms of sub-clause 2.6 of Clause 44 (i.e. Dispute Resolution Mechanism) of the subject contract.

3. Learned counsel further submits that the petition itself was premature for the reason that invocation of the Bank Guarantee had not yet happened.

4. Learned senior counsel appearing for the respondent per contra submits that prior to the matter becoming an excepted clause, appellant had to follow the procedure mentioned in Clause 39 of the contract between the parties which inter-alia involves issuance of show cause notice, issuance of banning order and providing a remedy of appeal.

5. Learned counsel, however, without prejudice to the above and in view of the objections raised by the appellant seeks leave to withdraw the petition under Section 9 of the Act filed and pending before the learned single Judge, reserving the right of the respondents to take such remedies as may be available in law at a later stage.

6. In view of the above, the impugned order dated 13.10.2023 in OMP(I)(COMM) 331/2023 is set aside. OMP(I)(COMM) 331/2023 is also dismissed as withdrawn.

7. It is clarified that this Court has neither considered, nor commented on the merits of the contentions of either party or the legal objections and submissions made by either party. All rights and contention of the parties are reserved.

8. The appeal is disposed of in the above terms.

9. Order dasti under signature of the Court Master.”



In view of the statement recorded before the Division Bench in proceedings in FAO(OS)(COMM) 234/2023, the present petition is dismissed as withdrawn.

DINESH KUMAR SHARMA, J

JANUARY 15, 2024
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