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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 260/2024& I.A. 36221/2024, I.A. 36222/2024,
I.A. 36223/2024
CORPORATE INFOTECH PRIVATE LIMITEDPetitioner

Through: Mr. Arvind Nigam, Sr. Adv., Mr.
Abhijat, Mr. SK Arora, Mr. Bharat
Arora, Mr. Lakshay Raheja, Mr.
Gaurav Arora, Advs.

versus

UNION PUBLIC SERVICES COMMISSIONRespondent

Through: Mr. Naresh Kaushik, Sr. Adv., Mr.
Vardhman Kaushik, Mr. Anand
Singh, Mr. Shantanu Shukla, Mr.
Mayank Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

13.08.2024

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1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking stay of the letter dated 02.08.2024, whereby the contract between the parties was terminated by the respondent.
2. In addition, the petitioner also seeks restraining the respondent from encashing Performance Bank Guarantees bearing No. 4605IGP220027117 dated 01.11.2022 issued by Kotak Mahindra Bank for a sum of Rs. 1,88,21,000/- and extended *vide* letter dated 27.12.2023.
3. The facts are that the petitioner participated in a bid and was awarded a contract in October, 2022 for revamping of software.
4. The respondent states that the petitioner did not perform its obligations as per the contract awarded and it is the case of the petitioner that the delays were solely attributable to respondent that it was the respondent who did not provide the conducive environment.



5. Since the respondent was of the view that it is the petitioner who had failed to discharge its obligation, the respondent terminated the contract *vide* Letter dated 02.08.2024.

6. In addition, the Bank Guarantees bearing No. 4605IGP220027117 and revised on 27.12.2023 is also sought to be encashed by the respondent.

7. After some arguments, as regard the stay of the termination letter is concerned, Mr. Nigam, learned senior counsel for the petitioner fairly concedes that whether the termination is right or wrong can only be decided by the arbitrator after going through the pleadings and evidence led by the parties. His only concern is regarding stay or encashment of the bank guarantees.

8. Mr. Kaushik, learned senior counsel for the respondent submits that the law with regard to bank guarantees is well settled. It is an independent contract and the respondent is very much within its rights to encash the same.

9. However, he states, on instruction, that he is agreeable to the matter being referred to arbitration and this petition being treated as an application under section 17 of the Arbitration and Conciliation Act, 1996 for the purpose of stay of encashment of the bank guarantees.

10. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

i) Justice Mukta Gupta, (Retd.) (Mob. No. 9650788600) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

11. Since it is a time bound matter, DIAC is requested to ensure immediate action.

12. The Sole Arbitrator appointed will decide the application under section 17 of the Arbitration and Conciliation Act, 1996 expeditiously and preferably within 4 weeks from entering reference.

13. Mr. Kaushik, learned senior counsel for the respondent on instructions state that the response to the application shall be filed within 10 days from today.

14. Till the section 17 application is decided, the bank guarantees shall not be encashed.

JASMEET SINGH, J

AUGUST 13, 2024/NG