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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 8496/2024 and CRL.M.A. 32414/2024
FIVE STAR CONSTRUCTIONS PVT. LTD. & ORS.Petitioners

Through: Mr.Shreyas Mehrotra and Mr.Rohan
Malik, Advocates

versus

M/S ORCHID INFRASTRUCTURE DEVELOPMENT PVT. LTD.
.....Respondent
Through: Mr.Ninad Dodgra, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
08.11.2024

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1. By way of present petition, the petitioners seek to assail the order dated 23.09.2024 passed by the learned Judicial Magistrate First Class (NI Act-02), Patiala House Courts, New Delhi in Ct. Case No.46487/2016, whereby their application filed under Section 315 read with Section 311 Cr.P.C. for recalling DW-1 for further examination and filing of additional documents came to be dismissed.
2. Learned counsel for the petitioners submits that the petitioners seek to recall DW-1 and also place on record the additional documents, in the form the records, that formed part of the arbitral proceedings. He submits that the said documents would be required for the accused to justify its defence taken during the trial.
3. Learned counsel for the respondent has opposed the present petition.



He submits that the subject application is the second attempt made by the petitioners. Lastly, he submits that the petitioners were not vigilant, which has resulted in delay in the trial. He, however, without prejudice to its rights and contentions, submits that in case the present petition is considered favourably, only one opportunity may be granted to the petitioners.

4. I have heard learned counsels for the parties and have also gone through the material placed on record. The documents sought to be placed on record are the documents that formed part of the arbitral proceedings. I have also found considerable merit in the petitioner's submission that not only recall of DW-1 but also placing on record of the additional documents would be crucial to the defence of the accused.

5. Considering the aforesaid request, the present petition is allowed, subject to payment of cost of Rs.10,000/- to be paid to the respondent before the next date of hearing in the Trial Court.

6. It is informed that the matter is coming up for hearing on 11.11.2024. The petitioner shall be at liberty to recall DW-1 on the said date alongwith the application to place on record additional documents. The Trial Court shall consider examining the aforesaid witness on the above-mentioned date or any other date as may be convenient.

7. In view of the above, the present petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

NOVEMBER 8, 2024

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