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

+ **O.M.P.(I) (COMM.) 404/2024**

SUNSHINE VENTURES

.....Petitioner

Through: Mr. Kenneth Martin, Mr. Navdeep
Dahiya, Advocates

versus

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

.....Respondent

Through: Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Mr.
Abhinav Bhardwaj Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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04.12.2024

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner seeking ex-parte /ad-interim injunction restraining the Respondent from invoking the Performance Bank Guarantee of Rs.1,13,87,700/- given by the Petitioner.
2. It is stated that an agreement was entered into between the parties for the work of IRQP for NH 64 from Km. 222/0 to 230/300 (Derol-Bharuch Section) and between Km. 238/400 to 252/200 (Ankleshwar-Modinagar-Sajod-Digas section), Km 182/00 to km 184/150 (Amod-Nahiyer Section), Km 204/00 to 204/700 (Sudi Patiya to Samni Section) of NH 64 in the State of Gujarat on EPC Mode.
3. It is stated that the work awarded to the Petitioner has been



successfully completed by the Petitioner and a completion certificate has been issued by the Respondent on 16.05.2024. It is stated that pursuant to the completion of work, certain disputes have arisen between the parties and the Respondent is invoking the Performance Bank Guarantees given by the Petitioner.

4. It is the case of the Petitioner that the so-called default has primarily occurred due to non-compliance of obligations on the part of the Respondent as per the contract and, therefore, since it is a case of breach of reciprocal promise, the Performance Bank Guarantees ought not to be invoked.

5. It is stated by the learned Counsel for the Petitioner that they have approached this Court by filing the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 on 11.11.2024 restraining the Respondent from invoking the Performance Bank Guarantees and immediately thereafter, the Respondent has taken steps to invoke the Performance Bank Guarantees. It is stated that the Petitioner has received a letter dated 19.11.2024 from the Respondent, wherein the Respondent has stated that steps will be taken to invoke the Performance Bank Guarantee.

6. It is the case of the Petitioner that the work has been successfully completed by the Petitioner for which a completion certificate has also been issued to the Petitioner. It is stated that the Respondent being the instrumentality of the State is not inclined to return the money back in order to restrain the Petitioner to claim damages and the Respondent is coming with a false case that the Petitioner is not performing its part of the work to the satisfaction of the Respondent which is post completion of work.

7. On 28.11.2024, this Court directed both the parties to come up with instructions as to whether an Arbitrator can be appointed by this Court and



this application be directed to be treated as an application filed under Section 17 of the Arbitration & Conciliation Act for a decision to be taken by the learned Arbitrator.

8. Today, learned Counsel for the parties submit that the present matter be referred to the learned Arbitrator who will take a decision in the matter under Section 17 of the Arbitration & Conciliation Act.

9. Since Article 26.3 of the agreement which is a dispute resolution clause which provides for adjudication of disputes through arbitration by the Courts at Delhi having the exclusive jurisdiction, this Court is inclined to appoint Ms. Priya Hingorani, Senior Advocate, (Mob. No. 9810001064) as the Sole Arbitrator to adjudicate upon the disputes between the parties.

10. In the meantime, the Order dated 28.11.2024 passed by this Court directing the Respondents not to invoke Performance Bank Guarantees shall continue till the learned Arbitrator hears the present petition under Section 17 of the Arbitration & Conciliation Act, which would now be heard by the learned Arbitrator in exercise of its powers under Section 17 of the Arbitration & Conciliation Act.

11. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

12. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.

13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator



on its own merits, in accordance with law.

14. It is made clear this Court has not made any observation on the merits of the case.

15. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 04, 2024

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