

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 6046 of 2024

Petitioner :- M/S Shiva Raj (Jv) Thru. Power Of Attorney Holder Shri Virendra Pratap Singh

Respondent :- Office Of The Dy. Chief Engineer/Const. Ii Northern Railway Lko. Thry. Dy. Chief Engi. And 4 Others

Counsel for Petitioner :- Pritish Kumar

Counsel for Respondent :- A.S.G.I., Sanjeev Singh

Hon'ble Pankaj Bhatia, J.

1. Heard learned Counsel for the petitioner as well as Sri Ankit Srivastava, learned Counsel appearing on behalf of respondents no.1 to 4 and Sri Sanjeev Singh, learned Counsel appearing on behalf of respondent no.5.
2. The present petition has been filed challenging the action of the respondents no.1 to 5 in encashing the performance guarantee executed by the petitioner while entering into a contract with the respondent.
3. The submission of the Counsel for the petitioner is that there was no allegation with regard to the non-performance of any part of the contract and no grievance has been addressed on that count by the respondents. He argues that the action for encashing performance guarantee was taken by the respondent solely on the basis of a complaint received that the partnership deed as submitted by the petitioner, was a forged document.
4. The petitioner has moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 which was registered as Arbitration Case No.117 of 2024 before the learned Commercial Court-I, Lucknow, who has passed an order dated 10.12.2024 directing notices to be issued and the matter was directed to be listed on 22.01.2025.
5. The notice of the arbitration case has been served upon the respondents today along with the present case. He may file a reply to the same within a week.
6. In these circumstances, the present petition is ***disposed off*** directing the learned Commercial Court-I, Lucknow to consider and pass appropriate orders on the application under Section 9 of the Arbitration Act in accordance with law with all expedition preferably within a period of four weeks from the

date of production of a certified copy of this order.

7. Till the order is passed, the respondents are restrained from encashing the performance guarantee given in the form of FDR, which are lying with the respondents. In case, the amount has already been withdrawn, the same shall be returned to the respondent no.5, which shall be subject to the outcome of the application under Section 9.

8. The parties are directed to appear before the learned commercial court on 08.01.2025.

9. Any observation made herein will not affect the commercial court for passing any order on merits.

Order Date :- 11.12.2024

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