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

+ O.M.P. 224/2012

JAY PRESTRESSED PRODUCTS LTD Petitioner

Through: Mr. Raman Kapur, Sr. Advocate with
Mr. Dhiraj Sachdeva, Mr. Aviral Tiwari, Mr.
Ankur Gosain and Mr. R.P. Singh, Advocates

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Jagjit Singh and Mr. Izhar Ahamad,
Advocates for Northern Railway
Mr. A.S. Sinha, Advocate for Ministry of
Railways

+ O.M.P. 1221/2012

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Mr. A.S. Sinha, Advocate for Ministry of
Railways

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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30.08.2013

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These are petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the Act). Even though several prayers have been made in the two petitions, referred to above, in substance Mr. Kapur says that the petitioner is seeking restraint on the recovery / adjustment against bills of the petitioner by the respondents.

I had on 22.07.2013 directed the parties to file a chart showing the following details :-

- (i). The total amount claimed;
- (ii). Amount withheld by the respondents;
- (iii). The unsecured amount in respect of which the security is sought by the respondents.

A chart has been filed by Mr. Jagjit Singh, which shows, in respect of captioned petitions, the total recovery which the respondents are entitled to make as per clause 18.2 of the agreement, is a sum of Rs.2,29,94,001/- against which a sum of Rs.20,81,993/- is recovered leaving a balance of Rs.2,09,12,008/- to be recovered.

Furthermore, according to Mr. Jagjit Singh, respondents have security in the form of two bank guarantees of a total value of Rs.45 Lakhs.

Mr. A.S. Sinha, who appears for Ministry of Railways says that the total amount which the respondents are claiming is a sum of Rs.2,67,71,953/- against which the amount withheld by the

respondents is Rs.37,20,500/-.

Mr. Singh who appears for the Northern Railway and Mr. Sinha who appears for the Ministry of Railways say that two bank guarantees in the total sum of Rs.45 Lakhs are available as security.

In these circumstances, Mr. Kapur, the learned senior counsel for the petitioner offers to furnish an additional bank guarantee in the sum of Rs.22 Lakhs within two weeks from today.

In the background of the aforesaid facts and circumstances, the learned counsel for the parties are agreed that captioned petitions can be disposed of with the following directions :-

- (i). Since an arbitrator has been appointed, these petitions will be placed before him, who will treat the same as applications under Section 17 of the Act.
- (ii). pending the disposal of the captioned petitions / applications, the interim order dated 07.03.2012 passed in OMP 224/2012 and interim order dated 21.12.2012 passed in OMP 1221/2012 shall continue to operate till appropriate orders are passed by the learned Arbitrator.
- (iii). The arbitrator will be free to vacate or modify or affirm or even expand the scope of the interim orders in accordance with the law.
- (iv). the parties will be free to refer their claims and counter claims, if any, before the learned Arbitrator, who shall decide the same in accordance with the law.

The captioned petitions are disposed of with the aforesaid observations.

Needless to say, the learned arbitrator will be free to pass any order that he deems fit in the facts and circumstances of the case after hearing both the parties.

Dasti.

RAJIV SHAKDHER, J

AUGUST 30, 2013

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