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

+ **FAO(OS) (COMM) 72/2020**

ONGC PETRO ADDITIONS LIMITED Appellant

Through: Mr Nakul Dewan, Sr Adv. with Mr K
R Sasiprabhau, Mr Aditya Swarup,
Mr Vinayak Maini, Mr Tushar
Bhardwaj and Mr Manan Shishodia,
Advs.

versus

TECNIMONT PRIVATE LIMITED & ANR. Respondents

Through: Mr Ritin Rai, Sr Adv with Mr Karan
Luthra and Mr Shravan Niranjana,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **05.02.2024**

[Physical Hearing/Hybrid Hearing (as per request)]

1. Mr Nakul Dewan, learned senior counsel, who appears on behalf of the appellant, says that while this appeal can be closed, a direction could be issued, to the effect, that in case the appellant were to succeed in the connected appeal i.e., FAO(OS)(COMM) 9/2024, titled: ***ONGC Petro Additions Limited vs. Tecnimont S.P.A.& Anr.***, the respondents would deposit the money received against the contractual bank guarantees, along with suitable interest, with the Registry of this Court.

1.1 In this regard, Mr Dewan has drawn our attention to paragraph 3 of the order dated 16.11.2022 passed in the instant appeal.

1.2 Although this order was passed in CM APPL. 49006/2022,

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inadvertently the order records that the “appeal is disposed of”.

1.3 The consensus among the counsel is that the appeal has not been disposed of as yet. The order dated 16.11.2022 shall stand corrected to that extent.

2. Mr Ritin Rai, learned senior counsel, who appears on behalf of the respondents, contends that there is a slight difference between the two matters. According to him, (something which is not disputed by Mr Dewan) the present appeal arises out of proceedings initiated under Section 9 of the Arbitration and Conciliation Act, 1996.

2.1 Mr Rai submits that the respondents have succeeded before the learned Single Judge and therefore, the direction issued in FAO(OS)(COMM) 9/2024 need not be issued in the instant matter as well.

3. Having heard the counsel for the parties, we are of the view that the best way forward would be to agree with the request made by Mr Dewan, which is to permit the appellant to withdraw the appeal.

3.1 To be noted, this submission has been made, having regard to the fact that the coordinate bench, *via* order dated 24.06.2020, had directed the respondents to keep the bank guarantees alive with a caveat that the charges *qua* the same would be borne by the appellant.

4. Concededly, according to Mr Dewan, up until now, the appellant has incurred approximately Rs.18 crores towards charges, which stand paid to either the concerned bank(s) or respondents.

5. Thus, having regard to the aforesaid, the appeal is dismissed as withdrawn.

6. However, in case the appellant were to succeed in

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FAO(OS)(COMM) 9/2024, equities will be adjusted *vis-à-vis* the subject contractual bank guarantees.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 5, 2024/pmc

Click here to check corrigendum, if any

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