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

+ **W.P.(C) 5282/2025 and CM APPLs. 24092/2025, 24094/2025**

KIMIYA ENGINEERS PVT LTD.

.....Petitioner

Through: Mr. Prashanto Sen, Sr. Adv.
alongwith Mr. Shivank Pratap singh,
Ms. Perna Mukherjee, Ms. Gursimar
Singh and Ms. Priya Singh,
Advocates.

versus

NBCC INDIA LIMITED

.....Respondent

Through: Ms. Abhipsa Mohanty and Mr.
Ashutosh Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **28.04.2025**

CM APPL. 24093/2025 – Exemption

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 5282/2025

3. The present petition has been filed by the petitioner praying as under:

“a) Issue an appropriate writ, order or direction declaring that the Contract dated 28.12.2019 stands expired; and

b) Issue an appropriate writ, order or direction restraining the Respondent to unilaterally extending the contract; and

c) Issue an appropriate writ, order or direction restraining the Respondent from encashing the original performance bank guarantee No. 10450000420 dated 17.01.2020 (Annexure P-13 at page No. 171) and also bank guarantee towards security deposit No. 1045ILG006121 dated 24.09.2021 (Annexure P - 13 at page No. 163) and also bank guarantee towards as the contract has already been expired;

d) Issue an appropriate writ, order or direction directing the Respondent



to return the original performance bank guarantee No. 10450000420 dated 17.01.2020 (Annexure P - 13 at page No. 171) and also bank guarantee towards security deposit No. 1045ILG006121 dated 24.09.2021 as the contract has already been expired; and/or

e) For grant of interim reliefs in terms of prayers (b) and (c) above pending the final disposal of the writ petition; and/or

f) Pass any such order / further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. The disputes between the parties have arisen in the backdrop of a contract awarded to the petitioner on 19.10.2019 for 'Construction of ESIC Medical Hospital at Andheri, Mumbai (At Risk & Cost of previous agency Ph-I)'. The total contract value of the said award was Rs. 28,08,73,314.45/- and was stipulated to be completed within a period of 6 months.

5. Learned counsel on behalf of the petitioner submits that the said timeline could not be adhered to due to reasons/delay attributable to the respondents.

6. He further submits that since the contract was for a period of 6 months, no escalation clause was stipulated in the terms and conditions of the contract. However, owing to the delays not attributable to the petitioner and increase in the costs/prices, the petitioner *vide* letters dated 14.01.2023 and 24.03.2023 communicated its difficulty to the respondents in continuation of work in absence of price escalation.

7. In the above circumstances, it is the case of petitioner that the said contract, under its original terms and conditions, has become impossible to perform and therefore stands frustrated. It is averred in the petition that despite the aforesaid circumstances, the respondents are not only extending the period of contract without the consent of the petitioner, but have also been forcing the petitioner to renew the bank guarantee/s furnished by the



petitioner to the respondent. It is alleged by the petitioner that the respondents have threatened to forfeit the said bank guarantee in an event they are not renewed for a period as directed by the respondents.

8. Issue notice.

9. Learned counsel as aforesaid accepts notice on behalf of the respondents.

10. Learned counsel for the respondent objects to the maintainability of the present petition and also seeks to refute the factual conspectus on the basis of which the present petition has been filed. It is further submitted that the respondents have so far not taken any steps to encash the performance bank guarantee submitted by the petitioner.

11. Let reply be filed by the respondent within a period of 4 weeks from today. Rejoinder thereto, if any, be filed within a period of 2 weeks thereafter.

12. Learned counsel for the respondents submits that till the next date of hearing no precipitative steps shall be taken by the respondents as regards impugned bank guarantee, subject to the same being kept alive and subsisting. The said statement is taken on record. Learned senior counsel for the petitioner submits that the petitioner will take steps to renew and keep the bank guarantee/s alive and subsisting.

13. List on 21.08.2025.

SACHIN DATTA, J

APRIL 28, 2025/at