

(2009) 08 DEL CK 0235
In the Delhi High Court
Case No : OMP 613 of 2008

SMJ-RK-SD(JV)

APPELLANT

Vs

National Highways Authority of India

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 36, 9

Citation : (2010) 7 RCR(Civil) 2218

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Kiran Suri, for the Appellant; Madhu Sweta and Anil Kumar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This petition u/s 9 of Arbitration & Conciliation Act, 1996 ("the Act", for short) has been preferred by the

petitioner with a prayer that respondent be directed to release the awarded amount of Rs. 31,90,77,468/- to the petitioner against a matching

value of the bank guarantee during pendency of the proceedings u/s 34 of the Act.

2. By an award dated 26th June 2008, the learned arbitral tribunal allowed the claim of petitioner to the tune of above amount. This award given

by learned arbitral tribunal has been challenged by respondent u/s 34 of the Act and OMP 578 of 2008 is pending adjudication before this Court.

The present petition has been made by petitioner explaining its hardships without liquidity. It is submitted by counsel for petitioner that petitioner

was facing extreme hardships in absence of liquidity and the amount awarded to the petitioner by the award would help the petitioner in conducting

its business. It is submitted that petitioner is prepared to give a matching bank guarantee to secure interest of respondent in case respondent succeeds in its petition u/s 34.

3. Section 36 provides that an award is enforceable only after objections filed u/s 34 are dismissed. Asking respondent to pay the amount of

award on the strength of bank guarantee to be furnished by petitioner would be contrary to the express provisions of Section 36. Provisions of

Section 9 cannot be invoked to circumvent the provisions of Section 36 of the Act. No doubt Section 9 of the Act is applicable post-award as

well but it is applicable only for the purpose as provided u/s 9 namely for preservation and interim custody of the subject matter of arbitration

agreement or for securing amount in dispute in arbitration or preservation or inspection of any property or things or for appointment of a receiver.

The basic and main purpose of Section 9 is to secure by interim measures the subject matter of dispute. Section 9 of the Act is not meant for

execution of award during pendency of objections against the award. I find no force in this petition. The petition is hereby dismissed. No orders as

to costs.