

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

Date of Reserve: 31.3.2009
Date of Order: 2nd April, 2009

OMP No. 169/2009

%

02.04.2009

Gammon India Ltd.

... Petitioner

Through: Mr. A.K.De, Advocate

Versus

GAIL (India) Ltd. & Anr.

... Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This application/petition has been filed by the petitioner under Section 9 of the Arbitration & Conciliation Act, 1996 with a prayer that this Court should restrain respondent no. 1 from enforcing and encashing bank guarantee no. 32/94 dated 23.7.1994 and restrain the respondent no.2/bank from remitting the amount of bank guarantee to the respondent no.1.

2. The bank guarantee was invoked by the respondent no.1 vide letter dated 24.3.2009 thus, the respondent no.1 cannot be restrained by this Court from enforcing or encashing the bank guarantee as the respondent no.1 before filing of this petition had already exercised its right under the contract and invoked the bank guarantee and asked the bank to encash the bank guarantee. Respondent no.2 cannot be allowed to be made a party in this application/petition since respondent no.2 is not a party to the arbitration agreement.

3. It is settled law that the Court has to be loathe in granting injunction against invocation of bank guarantees and the Court could issue such an injunction only under those circumstances where bank guarantee has been obtained by a fraud or the petitioner is likely to suffer an irretrievable/irreparable loss. If the allegations of the petitioner that the respondent no.1 was on the wrong side of the contract and the petitioner was liable to recover some damages, the Arbitrator would consider this and pass an award and would be at liberty to allow the damages thus, there is no question of irreparable damage to the petitioner. I find that there is no force in the application/petition. The application/petition is hereby dismissed.

April 02, 2009

vn

SHIV NARAYAN DHINGRA, J.