OD-1 to 10

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/1/2021
In
AP/1451/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1452/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1453/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1454/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1455/2015

INDIAN OIL CORPORATION LTD
VS

M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1456/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1457/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1458/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1459/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

And

IA NO. GA/1/2021
In
AP/1460/2015

INDIAN OIL CORPORATION LTD
VS
M/S BRIDGE & ROOF CO (INDIA) LTD

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : June 10, 2021.

(Via Video Conference)

Appearance:
Mr. Tilak Bose, Sr. Adv.
Ms. Vineeta Meharia, Adv.
Mr. Amit Meharia, Adv.
Ms. Madhurima Halder, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul, Adv.
…for respondent/petitioner

Mr. Utpal Bose, Sr. Adv.
Ms. H. Chakraborty, Adv.
Ms. Neelina Chatterjee, Adv.
….for applicant/respondent

The Court: Learned senior counsel appearing for the applicant, that is, M/s. Bridge & Roof Co. (India) Ltd., contends that despite previous orders of extension of an initial order passed by a Coordinate Bench on June 21, 2013 regarding extension of bank guarantees, the said orders of extension as well as the parent order do not stand on good legal footing at present due to the change of law. It is submitted by learned senior counsel that in view of the change of law, a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 does not automatically operate as stay of the award challenged. It is further submitted that since such argument involves a pure question of law and was not taken on previous occasions due to bona fide omission on the part of counsel, this Court ought to modify the said order and at best direct indemnity to be furnished by M/s. Bridge & Roof Co. (India) Ltd. for an equivalent amount as the bank guarantees.

It is further submitted that, in view of the prevalent pandemic situation, the banks are charging 100 per cent margin on extension of bank guarantees, which would put his client M/s. Bridge & Roof Co. (India) Ltd. in dire straits.

Learned senior counsel further submits that since the premise and validity of the parent order has undergone a sea change in view of the change of law as indicated above, a blanket order of extension of bank guarantees is not tenable at the present juncture since the entire circumstances for the previous orders have now changed.

Learned senior counsel appearing for the Indian Oil Corporation contradicts such submissions and argues that the same submissions as made before this Court in connection with the present applications were also advanced before the previous Coordinate Benches which extended the original order of extension of bank guarantee and/or modified such order of extension by granting leave to renew the bank guarantees or furnish fresh bank guarantees of equivalent amount on the same terms and conditions as the original order. It is submitted that since M/s. Bridge & Roof Co. (India) Ltd. did not urge such legal point at any point of time, rather, prayed for extension of the bank guarantees on several occasions even after the change of law, such orders cannot be vacated and/or modified at this belated juncture, particularly, since the application under Section 9 of the 1996 Act itself was disposed of by the parent order.

It is further argued that it is always open to the present applicants to renew or furnish fresh bank guarantees on similar terms and conditions, which would not attract a 100 per cent margin. As such, the pandemic argument, as contended by the respondent in the applications, is not tenable in the eye of law.

Upon considering the submission of both sides and going through the materials on record, it is evident that there is substance in the submission of Indian Oil Corporation Ltd. that the arguments made for enlargement of the time granted previously for extension/renewal of the bank guarantees hold good, in any event, only in respect of some of those which have been stipulated in the chart provided at page 11 paragraph 12 of the present application, which are going to expire soon. Hence, it would be unnecessary to go into the question of extension regarding the other bank guarantees, which expire either in September, 2021 or in the year 2022.

Considering the argument of the applicant as regards change of law, the same does not hold water, since similar arguments were available to the applicants on the previous occasions when the interim order was extended. That apart, the change of law in question does not have a direct bearing in the present context, since the direction for renewal of bank guarantee was in the nature of a penal measure due to certain defaults, apparently committed by the present applicant M/s. Bridge & Roof Co. (India) Ltd., and not on the plinth of the law as it stood before the current amendments. Hence, the "change of law" argument is not relevant for the present applications.

As far as the pandemic situation is concerned, undoubtedly, all undertakings, including government undertakings, may be in some financial distress, but such distress *ipso facto* cannot justify the reversal of the several orders of extension as well as the parent order passed during final disposal of the application under Section 9 of the 1996 Act at this belated juncture. However, considering that the present applicant, namely, M/s. Bridge & Roof Co. (India) Ltd. may be in some financial distress, more so, since the current applications were kept pending in this Court during the period after their filing, the period for renewal/extension/replacement of the bank guarantees expiring on 30th June, 2021 ought to be considered.

Accordingly, the present applications are disposed of by extending the time for extension/renewal/replacement of the following bank guarantees till June 29, 2021, on the same terms and conditions on which they were furnished as per the parent order dated June 21, 2013 as modified by the order dated September 9, 2015:

i. The bank guarantee furnished by the Bank of Maharashtra to the tune of Rs.81,93,375/-, as mentioned in the first row of serial no.4 of the chart at page 11, paragraph 12 of the present application.

ii. The bank guarantee given by the Bank of Maharashtra to the tune of Rs.57,81,750/- as appearing the first row of serial no.5 of the chart.

iii. The bank guarantee given by the State Bank of India to the tune of Rs.8,06,876/- as mentioned in serial no.6 of the chart.

iv. The bank guarantee given by the Bank of Baroda to the tune of Rs.34,37,000/- and by the State Bank of India to the tune of Rs.3,00,00,000/- respectively appearing in the first and third rows of serial no.7 of the chart. The one given by the Bank of Baroda to the tune of Rs.2,00,00,000/- appearing in the fourth row of serial no.7.

v. The bank guarantee given by the State Bank of India to the tune of Rs.3,00,00,000/- appearing in the third row of serial no.8 and that given by the Bank of Baroda to the tune of Rs.2,00,00,000/- appearing in the fourth row of serial no.8 of the said chart.

vi. The bank guarantee given by the Bank of Baroda to the tune of Rs.2,27,22,373/- appearing in the first row of serial no.9.

vii. The bank guarantee given by the Bank of Baroda to the tune of Rs.42,62,000/- appearing in the second row of serial no.9.

viii. The bank guarantee given by the State Bank of India to the tune of Rs.3,00,00,000/- appearing in the third row of serial no.9.

ix. The bank guarantee given by the Bank of Baroda to the tune of Rs.2,00,00,000/- appearing in the fourth row of serial no.9.

x. The bank guarantee given by the Bank of Maharashtra to the tune of Rs.29,91,225/- appearing in the first row of serial no.10.

xi. The bank guarantee given by the Bank of Maharashtra to the tune of Rs.7,48,000/- appearing in the second row of serial no.10.

It is relevant to mention here that the last two bank guarantees mentioned above are due to expire on July 6, 2021 and the rest on June 30, 2021. In default of renewal/extension/replacement of the aforementioned bank guarantees on or before June 29, 2021, the default clause in the parent order, as subsequently modified, will come into operation and the Indian Oil Corporation Ltd. shall be entitled to invoke the amounts covered by the aforesaid bank guarantees. It may further be noted that in the event the bank guarantees are invoked due to default in compliance by M/s. Bridge & Roof Co. (India) Ltd., the Indian Oil Corporation Ltd. shall not utilize the said amounts of money until further orders.

It is further made clear that the Indian Oil Corporation Ltd. shall not invoke the bank guarantees in question till June 29, 2021. M/s. Bridge & Roof Co. (India) Ltd. shall intimate the details regarding such renewal/extension/replacement of bank guarantees to the Indian Oil Corporation Ltd. at the earliest after such renewal/extension/replacement takes place.

Liberty is granted to the applicant to pray for further extension/enlargement of the time granted in this order in the event of any circumstances beyond the control of the parties, subject to consideration by the Bench taking up such prayer, if made. The opposite party, that is, Indian Oil Corporation Ltd., shall file its affidavits-in-opposition to the applications by four weeks from date.

Replies, if any, shall be filed within a fortnight thereafter. All the applications shall be enlisted after six weeks from date before the appropriate Bench.

The parties and the concerned banks shall act on the communication of the learned advocates on record and/or server copies of this order, without insisting upon prior production of certified copies thereof.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

Kc./bp.