IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.406 OF 2014
IN
NOTICE OF MOTION NO.4177 OF 2013
IN
L.C.SUIT NO.4367 OF 2013

Oil & Natural Gas Corporation Ltd, A company incorporated ..	..Appellant/ Orig.Deft.1
Vs	
1.M/s. Ganesh Benzoplast Ltd..	.. Respondents/ Orig.Plff.
2.Central bank of India ..	& Orig.Deft.2

Mr. S.P.Bharti, Advocate for Appellant.

Mr. R.S.Apte, Senior Advocate, i/b Rajani Associates, Advocates for respondent no.1.

CORAM	:	R.G.KETKAR,J.
RESERVED ON	:	08/04/2015
PRONOUNCED ON:		24/04/2015

PC:

1. Heard Mr. S.P.Bharti, learned counsel for the appellant and Mr. R.S.Apte, learned senior counsel for respondent no.1 at length. At the request of Mr. Bharti, respondent no.2 is deleted from the present proceedings.

2. Admit. M/s. Rajani Associates waive service on behalf of respondent. At the request and by consent of the parties, Appeal is taken up for final hearing.

3. By this Appeal, original defendant no.1 has challenged

the Judgment and order dated 22.1.2014 passed by the learned Judge, City Civil Court, Greater Mumbai, in Notice of Motion No.4177 of 2013 in S.C.Suit No.4367 of 2013. By that order, the learned trial Judge issued injunction restraining the appellant from invoking the bank guarantee given by respondent no.2-defendant no.2 bank for respondent no.1-plaintiff and the plaintiff was directed to ensure that the said bank guarantee is kept alive during the pendency of the suit. The appellant was entitled to invoke the bank guarantee, if intimation regarding its renewal is not received by it two weeks prior to the date of its expiry and if it is found that the same is not renewed.

4. Since the regular Court presided over by Honourable Mr. Justice K.K.Tated has passed order “not before me”, as per the administrative order passed by the Honourable Chief Justice, the Office has placed this matter before me. The parties shall, hereinafter, be referred to as per their status in the trial Court. The facts and circumstances, giving rise to filing of this Appeal, briefly stated, are as under.

5. On 25.9.2012, defendant no.1 floated a tender bearing Tender No.UA6KC12002 for hiring of services for additional storage of crude oil and pumping of oil for tankers loading at Jawaharlal Nehru Port Trust (for short, 'J.N.P.T.'). The contract

period was five years. One of the prerequisites to enable a party to bid for the same was submission of a bid security in the form of bank guarantee of Rs.82,89,000/-. The validity of the bid was upto 120 days from the date of opening of un-priced techno-commercial bid. The validity of the bid bond was to be upto 150 days from the date of opening of un-priced techno-commercial bid. According to the invitation to bid, all tender forms and supporting documents in respect of the same were to be submitted through defendant no.1's e-procurement site, save and except such documents which were specified in the bid document to be submitted in physical form. Clause 17.7 (b) provided that the bid security would be forfeited in case the bid was varied or modified in a manner not acceptable to the defendant no.1 during the validity period or any extension of the validity duly agreed by the bidder. One of the conditions of the tender was that the Board of the Company desirous of submitting its bid would have to authorise the person to sign a tender for and on behalf of such company. In accordance with that stipulation, the plaintiff appointed Mr. Duraiswamy Selvaraju, President of the plaintiff-company to sign and execute all necessary papers, documents, tender applications, undertakings, affidavits and all other related papers in respect of the tender as well as to give Indemnity Bond/bank guarantee or any other security for and on behalf of the plaintiff. As per the tender conditions, the plaintiff procured a bank guarantee towards the bid security/bid bond from defendant no.2's branch at Marine Lines, Mumbai, on 13.2.2013. The said bank guarantee was to remain in force up to 15.7.2013. The plaintiff submitted its bid to defendant no.1 on 14.2.2013 by uploading the requisite documents on defendant no.1's e-procurement site. The plaintiff also submitted documents in physical form as specified in clause 8 of the bid document.

6. On the same day, i.e. 14.2.2013, the plaintiff's parent company, M/s Indexone Infracon Logistics Pvt. Ltd executed a Deed of Guarantee to defendant no.1 unconditionally agreeing that in case of non-performance by the plaintiff of any of its obligations in any respect pertaining to the said bid, M/s Indexone would take up the job without any demur or objection in continuation and without loss of time and without cost to defendant no.1. The plaintiff also submitted an “integrity Pact” as required by defendant no.1 under the tender.

7. Defendant no.1, by its letter dated 28.5.2013, requested the plaintiff to extend its bid/offer validity upto 14.9.2013 for further evaluation of the plaintiff's offer. Defendant no.1 also

requested the plaintiff to extend the validity of the bank guarantee No.50/38 dated 13.2.2013 till 14.10.2013. The plaintiff, accordingly, extended the bank guarantee upto 15.10.2013 and the said fact was duly intimated by the plaintiff as well as defendant no.2 to defendant no.1.

8. On 6.6.2013, defendant no.1 requested the plaintiff to upload certain documents in the e-bidding SRM system for further evaluation of the plaintiff's offer. It is the case of the plaintiff that defendant no.1 called upon the plaintiff to once again upload all those contracts, notarized copies which were already uploaded by the plaintiff on 14.2.2013. The entire documentation relating to the tender/bid was handled independently by Mr Daraiswamy Selvaraju, President of the plaintiff. The fact that defendant no.1 once again asked the plaintiff to upload copies of the contracts, was not disclosed by Mr Selvaraju to anyone else in the organization. The said fact was unearthed by the plaintiff very recently.

9. In pursuance of letter dated 6.6.2013, the Bank Guarantee No.50/30 was duly extended for the period up to 15.10.2013. The plaintiff further came with the case that upon receipt of the letter dated 6.6.2013 from defendant no.1, Mr. Selvaraju, without letting anybody else from the plaintiff-company know, modified the said documents by over

writing and changing quantifies and capacities and/or periods of the contract. The said false documents were uploaded by Mr. Selvaraju upon the web site of defendant no.1 on 14.6.2013 despite the correct and true documents having been submitted to defendant no.1 way back in Feb.2013. The hard copies of these false documents were also submitted by Mr. Selvaraju to defendant no.1 on 17.6.2013.

10. It is the case of the plaintiff that on 25.9.2013 defendant no.1 once again requested the plaintiff to extend the bank guarantee for a period up to 31.1.2014. As the plaintiff was not interested in participating in the tender due to the continuous delay on the part of defendant no.1, it decided to withdraw the application and accordingly informed defendant no.1 by letter dated 30.9.2103 delivered by hand. The plaintiff also requested to return the original bid bond bank guarantee of Rs.82,89,000/-. On 11.10.2013, defendant no.1 approached defendant no.2 for invoking the bank guarantee. On the same day, the plaintiff intimated the bank not to encash the bank guarantee as it was taking up the issue of invocation with the authorities of defendant no.1. The plaintiff, thereafter, addressed a letter dated 11.10.2013 to defendant no.1 withdrawing the said letter dated 11.10.2013. The said letter was faxed by Mr Selvaraju without the

approval/consent of the plaintiff. By another letter dated 11.11.2013, the plaintiff requested defendant no.1 to withdraw the plaintiff's letter dated 30.9.2013 with immediate effect as the plaintiff was ready to extend the bid validity/bid bond validity upto 31.12.2013 and was ready to extend the validity of the said bank guarantee upto 31.1.2014.

11. It is the case of the plaintiff that the letter dated 6.6.2013 sent by defendant no.1 was unilaterally acted upon by Mr. Selvaraju without taking any other officers of the plaintiff into confidence. It was only upon conducting the investigation, the plaintiff came to know that Mr Silvaraju who was an ex-employee of defendant no.1 had joined the plaintiff only around a year ago, in active connivance and collusion with an unknown person/persons working with defendant no.1 and/or any other organization had hatched a conspiracy to firstly have the letter dated 6.6.2013 sent to the plaintiff, and secondly, to thereafter use modification/forgery of documents as a pretext to enable invocation of bank guarantee, thereby, intending to cause a huge loss of Rs.82,89,000/- to the plaintiff. The plaintiff came with the case that Mr. Selvaraju along with his accomplice/s have conspired together to blacklist the plaintiff so as to tarnish its reputation and goodwill. Mr. Selvaraju along with

the said unknown person/s have, with a common intention, hatched a criminal conspiracy to commit offences under sections 463,464, 468, 469, 415, 418 read with sections 34 and 120-B Indian Penal Code, 1860 against the plaintiff. The plaintiff, therefore, filed a complaint with the Senior Inspector of Police attached to Andheri Police Station on 22.11.2013. The plaintiff alleged that the entire plan to invoke bank guarantee issued by defendant no.2 on 13.2.2013 is a fraudulent one and the result of grave misdemeanor on the part of Mr. Selvaraju in cohorts and active connivance of certain unknown person/s belonging to defendant no.1. The plaintiff further contended that the invocation of bank guarantee is vitiated by grave fraud and, therefore, it is necessary to injunct defendant no.1 from invoking the bank guarantee. The plaintiff accordingly instituted suit for injunction restraining defendant no.1 from in any manner invoking the bank guarantee issued by defendant no.2 either on the ground of mismatch of documents submitted by the plaintiff or otherwise howsoever.

12. During the pendency of the suit, the plaintiff took out Notice of Motion No.4177 of 2013 for temporary injunction restraining defendant no.1 from invoking the bank guarantee in any manner and relied upon affidavit of Mr. Bhupendra R.

Pitale in support of the Motion.

13. Defendant no.1 filed reply opposing the Motion. It was, inter alia, contended that the suit is not maintainable as the disputes between the plaintiff and the defendant are subject to arbitration agreement contained in the bid document and, therefore, the parties are required to get the dispute adjudicated through arbitration and not by intervention of civil Courts including City Civil Court. It was contended that the invitation to bid was published on 25.9.2012 and the parties interested in bidding were required to submit their bids by 14.2.2013. The bid called for was under two bid system through e-procurement site. The parties interested in bidding were required to purchase the bid document and submit their bids through e-bidding portal after careful perusal/ examination/forms on terms and specification contained in the bid document. The bid document contained following annexures and appendix:

(i)	Annexure I	Instructions to bidders;
(ii)	Annexure II	General Conditions of Contract;
(iii)	Annexure III	(Part I) – Scope of Work and Technical Specifications.
(iv)	Annexure III	(Part II)-Special conditions of contract.
(v)	Annexure IV	Bid Evaluation Criteria

(vi)	Annexure V	Techno Commercial Matrix
(vii)	Annexure VI	Price Bid Conformation Sheet.
(viii)	Annexure 7	Price Bid format/Schedule of Rates (Price Bid Proforma)

14. All bidders were required to submit all tender forms and supporting documents through O.N.G.C. e-procurement site only except the following documents which were required to be submitted in physical form in separate envelope:

(a) The original bid security;

(b) The Power of Attorney or authorization or any other document consisting of adequate proof of the ability of the signatory to bind the bidder, in original when the Power of Attorney is special "Power of Attorney" related to the specific tender of ONGC only.

A notarized true copy of Power of Attorney shall also be accepted in lieu of the original, if the Power of Attorney is a general "Power of Attorney". However, the photocopy of such notarized true copy shall not be accepted.

(c) Integrity pact duly signed;

(d) Agreement/Corporate Guarantee as per clause no. (B.1.2.5), if applicable.

(e) Any other document required to be submitted in physical form as per tender document.

15. It was contended that on scrutiny of the plaintiff's Techno Commercial Bid, defendant no.1 found that the information contained in certain documents submitted by the plaintiff in regard to the experience criterion was deficient on many counts. Defendant no.1 uploaded letter dated 6.6.2013 on its e-bidding portal asking the plaintiff to upload the clarifications mentioned therein. The plaintiff, in order to meet the experience criterion, submitted the contracts / documents along with other documents with -

(1) Alok Industries Ltd.,

(2) Jindal Poly Films Ltd;

(3) Garden Silk Mills Ltd., and

(4) Reliance Industrial Ltd.

16. Defendant no.1 contended that in case of documents of experience related to M/s. Alok industries, the performance certificate issued in favour of the plaintiff was found to be without any file number, date, reference number of the agreement and copy of the contract bearing No. CONTRACT/ALI/SEPT/01/2012-13 dated 1.9.2012 for terminal handling services for 2500 matric tonnes from 1.9.2012 did not have complete scope of work. The contract did not mention charges for storage for loading into marine tankers.

In view thereof, the plaintiff was asked to upload the purchase order/agreement with the scope of work clearly mentioned against the aforesaid contract with M/s.Alok Industries. The plaintiff was also asked to upload Satisfactory Performance Certificate issued by M/s Alok Industries with reference number, date of issue and reference of purchase agreement, period wise break and capacity of tankage given on hiring.

17. In the case of documents of experience related to M/s Jindal Poly Films Ltd, the Satisfactory Performance Certificate issued in favour of the plaintiff was without any file number,date, reference number of PO/Agreement and, therefore, clarification was sought from the plaintiff asking it to upload copy of PO/agreement with M/s Jindal Polyfilm Ltd with the Scope of Work clearly mentioned and also to upload Satisfactory Performance Certificate complete with reference number, date of issuing and reference of POs/agreements etc., period wise break upand capacity of tankage given on hire issued by M/s Jindal Polyfilms Ltd.

18. In case of documents of experience relating to M/s Garden Silk Mills Ltd, the Satisfactory Performance Certificate did not contain file number, reference number of PO/Agreement etc. Further the agreement of plaintiff with Garden Silk Mills Ltd did not contain complete Scope of Work.

19. In regard to Reliance Industries, similar discrepancies were noticed and accordingly clarifications were sought. It was, therefore, denied that defendant no.1, by its letter dated 6.6.2013, called upon the plaintiff to again upload all those contracts.

20. Defendant no.1 further contended that Bid Evaluation Criterion at B.1.2.1 clearly specifies that 'the bidder should have two years of minimum work experience of providing services to receive, storage, handling and delivery by way of pumping/loading to marine tankers of Crude Oil/POL/Petroleum products etc of not less than 60000 M3 shell capacity during the last 7 years from the techno-commercial bid opening date. The contract documents submitted by the plaintiff in support of the eligibility of experience did not meet the criterion of minimum 60000 M3 Cubic Metric Tonnes shell capacity and were lacking information.

21. Defendant no.1 contended that the plaintiff uploaded clarification on e-bidding site of defendant no.1 by 17.6.2013. On scrutiny of these documents uploaded by the plaintiff, it was found that there was variation in documents specifically in relation to the capacity mentioned and Period of Contract. On the face of it, the documents clearly show that there was

'over writing' of the storage capacity and Period of Contract. The storage capacity was increased with reference to the first submission of documents along with techno commercial bid. The plaintiff, who initially expressed inability to extend the validity of Bid Bond by letter dated 30.9.2013, agreed to extend validity period up to 31.1.2014 vide letter dated 11.11.2013. In the meantime, defendant no.1 while scrutinizing uploaded documents noticed that the documents uploaded were mismatching and, therefore, invoked the bank guarantee on 11.10.2013. Defendant no.1 in order to remove any doubt in the matter instituted an inquiry and by letter dated 11.11.2013 called upon the plaintiff to attend office of defendant no.1 with original documents. Vide letters dated 15.11.2013, 21.11.2013 and 27.11.2013, the plaintiff sought extension of time and assured to submit relevant documents. Though the plaintiff submitted statement of fact, but subsequently expressed its inability to submit documents without Board's approval.

22. The plaintiff filed affidavit-in-rejoinder and contended that the Bid Criterion was for 60000 M3 cubic matric tonnes for two years, i.e.1,20,000 M3 cubic metric tonnes. The quantity submitted in the bid by the plaintiff was for a total quantity of M3 1,53,200 cubic metric tonnes and thus the

plaintiff qualified in the initial documents submitted with the bid itself. The plaintiff has submitted a certificate of J.N.P.T. confirming having handled 9.3 lacs Metric Tonnes for the last three years which is about 10 times the required criteria. The plaintiff denied that the contract documents certificate in support of the eligibility of experience did not meet the criteria of minimum 60,000 M3 shell capacity. The plaintiff also reiterated its stand in the plaint and the affidavit-in-support of motion and denied all the adverse contentions.

23. On the basis of material on record, the learned trial Judge allowed the motion and restrained defendant no.1 from invoking the bank guarantee given by defendant no.2 for the plaintiff and at the same time directed the plaintiff to ensure that the said bank guarantee is kept alive during the pendency of the suit. It was further made clear that defendant no.1 will be entitled to invoke bank guarantee if intimation regarding its renewal is not received by it two weeks prior to date of its expiry and if it is found by it that the same is not renewed. It is against this order, defendant no.1 has instituted the present Appeal.

24. In support of this Appeal, Mr. Bharti has taken me through the impugned order and in particular paragraphs 11, 14 and submitted that the learned trial Judge rightly

observed that a person seeking injunction against invocation of bank guarantee is required to show a prima facie case of established fraud and irretrievable injury. He submitted that the bids were invited for "hiring of services for additional storage of crud oil and pumping of oil for tankers loading at JNPT" in the prescribed bid forms and proforma enclosed through e-procurement site. The bid security/E.M.D. was to be submitted either in the form of Demand Draft/Bid bond bank guarantee with un-priced techno commercial bid in the sum of Rs.82,89,000/-. All the tender forms and supporting documents were to be submitted through O.N.G.C. e-procurement site only, except certain documents which were to be submitted in physical form also in a sealed envelope subscribed as "physical documents" against e-procurement tender No.UA6KC12002 open on – to be opened by only Tender Opening Officer at 17.00 hours on."

25. Mr. Bharti invited my attention to various clauses of Bid Document. In particular, he submitted that clause 5.2 expected bidder to examine all instructions, forms, terms and specifications in the bidding documents. Clause 7.2 provided that the bid consisting of all the six Annexures and all other attached supporting documents, properly identified with distinct file names, should be digitally signed using digital

signatures issued by an acceptable Certifying Authority as per Indian IT Act, 2000 (as amended from time to time) before the bid is uploaded. Clause 7.8 lays down that the bid including all attached documents shall be digitally signed by duly authorized representative of the bidding company. Each file should be digitally signed and then uploaded. Clause 7.9 lays down that the bidder shall clearly indicate their legal constitution and the person signing the bid shall state his capacity and also source of his ability to bind the bidder. In the present case, Mr. Selvaraju, President of the plaintiff's company, was duly authorized representative of the plaintiff company.

26. Clause 16.2 lays down that in exceptional circumstances, prior to expiry of the original bid validity period, the ONGC may request the bidder for a specified extension in the period of validity. The Bidder will undertake not to vary/modify the bid during the validity period or any extension agreed thereof. The bidder agreeing to the request for extension of validity of offer shall be required to extend the validity of Bid Security correspondingly. Clause 17.1 lays down that the Bid Security is required to protect the ONGC against the risk of Bidder's conduct which would warrant the security's forfeiture in pursuance to clause 17.7. Clause 17.7

(b) lays down that the Bid Security shall be forfeited by ONGC if Bid is varied or modified in a manner not acceptable to ONGC during the validity period or any extension of the validity duly agreed by the Bidder. Clause B.1.2.1. Lays down that the bidder should have minimum 02 (Two) years of experience of "providing services to receive, storage, handling and delivery by way of pumping/loading to marine tankers of Crude Oil/POL/Petroleum products etc of not less than 60,000 M3 Cubic Metric Tonnes shell capacity during last 7 years from the techno-commercial bid opening date. The bidder is required to submit notarized copies of respective contracts along with documentary evidence in respect of satisfactory performance of contracts, in the form of copies of any of the documents (indicating respective contract number and type of services), such as Satisfactory Completion/Performance Report etc. Clause E.4 of Bid Evaluation Criteria in Annexure-IV (page 105 of additional compilation) permitted ONGC to seek clarifications. The said clause reads as under:

> "Based on the compliance in the above matrix, if in the opinion of ONGC, the bid contains deficiencies/ambiguity w.r.t. the tender conditions, ONGC may at its discretion give opportunity to the

bidder to clarify the ambiguity/to furnish confirmation/deficient documents, as the case may be.”

27. Mr. Bharti submitted that by resolution dated 30.10.2012 passed in the Board of Directors of the plaintiff, Mr Selvaraju, President of the Company, was authorised to sign/execute all necessary papers. He was also authorized to represent, discuss, negotiate and deal with ONGC. The plaintiff also executed General Power of Attorney on 18.1.2013 in favour of Mr. Selvaraju.

28. Mr. Bharti submitted that on 6.6.2013 the plaintiff was called upon to upload clarifications/confirmations/documents in the e-bidding SRM system for further evaluation of the plaintiff's offer as more particularly set out in clauses (a) to (h). In pursuance thereof, the plaintiff uploaded -

(1) document dated 25.1.2009 addressed by it to M/s Jindal Polyfilm Ltd. Against 'Capacity Hired', the figure '7' is overwritten;

(2) document dated 31.1.2009 addressed by the plaintiff to M/s Garden Silk Mills Ltd. Against 'Capacity Hired', figure '1' is overwritten by figure '7' twice. Again, against 'Period of Contract' the figure '1' is overwritten by figure '7';

(3) document dated 1.9.2012 addressed by the plaintiff

to M/s Alok Industries Ltd. Against 'Capacity Hired', the figure '7' is overwritten;

(4) letter dated 15.12.2012 addressed by the plaintiff to M/s Reliance Industries Ltd. Against 'Capacity Hired', the figure '7' is overwritten. There is also overwriting against 'Period of Contract'.

29. Mr. Bharti submitted that in paragraphs 10 and 12 of the Plaint, the plaintiff had made reference to the documents uploaded by the plaintiff as also admitted modifications/variations in the documents that were uploaded in pursuance of the request made by defendant no.1 on 6.6.2013. He submitted that uploading cannot be done without digital signature. In the present case, on behalf of the plaintiff, Mr. Rishi R. Pilani, one of the Directors was digitally signing. The plaintiff has also not sought declaration of fraud in the suit.

30. Mr. Bharti submitted that the learned trial Judge committed serious error in issuing injunction restraining defendant no.1 from invoking bank guarantee though the plaintiff did not make out prima facie case of established fraud and an irretrievable injury. In support of this submission, he relied upon the following decisions:

1. *U.P.C.F. Ltd Vs. Singh Consultants and Engineers (P) Ltd*,

(1988) 1 SCC 174;

2. *Svenska Handelsbanken Vs. M/s India Charge Chrome*, **AIR 1994 SC 626**;

3. *O.N.G.C. Vs Jagson Intl. Ltd*, **2005(3) Mh.L.J.1141**.

31. On the other hand, Mr. Apte supported the impugned order. He submitted that defendant no.1 has suppressed relevant and material facts from the trial Court. He submitted that all the bids were rejected by Tender Committee of defendant no.1 on 5.9.2013 for non-compliance of Techno Commercial Bid. The bids were rejected as all the bidders did not comply Techno Commercial requirements of tender. He submitted that on 25.9.2013, defendant no.1 called upon the plaintiff to extend bid/offer validity upto 31.12.2013 for further evaluation of the plaintiff's offer. Defendant no.1 also called upon the plaintiff to extend validity of the bank guarantee No.50/38 dated 13.2.2013 for Rs.82,89,000/- till 31.1.2014. He submitted that there was no question of evaluation of the plaintiff's offer when the Tender Committee had rejected all the bids including that of the plaintiff on 5.9.2013.

32. Mr. Apte submitted that on 11.11.2013, General Manager (CHEM) of defendant no.1 issued notice to Mr Selvaraju asking him to remain present in person or through

authorized representative with all relevant documents in original related to the tender in question before Inquiry Officer appointed by the Common Authority to conduct an inquiry in the case to find the facts in a time bound manner. He submitted that no inquiry was pending in July, August, September of 2013. On 11.10.2013, defendant no.1 invoked the bank guarantee after the tender was cancelled. He submitted that these facts were suppressed by defendant no.1 before the trial Court. In support of this submission, he relied upon following decisions;

1. *S.P.Chengalvaraya Naidu Vs. Jagannath*, **1994 (1) SCC 1**.
2. *Bhaskar Laxman Jadhav S. Karamveer Kakasaheb Wagh Education Society*, **AIR 2013 SC 523**.

33. He also invited my attention to affidavit-in-rejoinder dated 8.10.2014 filed on behalf of the plaintiff to affidavit dated 11.9.2014 of defendant no.1 and in particular paragraph 4 thereof. He submitted that in paragraph 12 of the Plaint, the plaintiff has specifically disclosed the modifications/variations made by Mr. Selvaraju behind the back of officials of the plaintiff and without any authority. He further submitted that in paragraph 18 of the Plaint, the plaintiff has made out a prima facie case of established fraud. He invited my attention to documents initially

submitted by the plaintiff and modified/varied documents uploaded by Mr. Selvaraju for comparison.

(1) Document dated 25.1.2009 at page 121 addressed by the plaintiff to M/s Jindal Polyfilms Ltd, in which against item no.4 'Capacity Hired' it was mentioned as 1500 MT. As against this, uploaded document at page 174 shows that against item no.4 'capacity Hired', figure '7' was overwritten in the place of figure '1' so as to make it 7500 MT.

(2) Document dated 31.1.2009 addressed by the plaintiff to M/s Garden Silk Mills Limited at page 128. Against item no.2 'Capacity Hired' – 1000 MT+5% (1000 starting from 20.2.2009 to 31.12.2011) and against item no.4 'Period of Contract', it was mentioned 1000MT–34 months and 8 days in the document and uploaded document at page 181 shows against item no.2 'Capacity Hired' figure '1' was overwritten by figure '7' to make it 7000 MT. Again figure '1' was over written by figure '7' to make it 7000 MT + 5% (7000 starting from 20.2.09 to 31.12.11). As far as item no.4 'Period of Contract' figure '1' was overwritten by figure '7' to make it 7000 MT.

(3) Document dated 1.9.2012 addressed by the plaintiff to M/s. Alok Industries Ltd at page 135. Against item no.2 'Capacity Hired', it was mentioned as 2500 MT starting from 1st September, 2012 and item no.3 'Period of Contract' it was

mentioned as 7 months. The document uploaded at page 188 shows that as far as item no.2 'Capacity Hired' figure '2' was overwritten by figure '7' to make it 7500 MT starting from 1st September, 2012. In respect of item no.3 'Period of Contract', figure '1' was added before figure '7' to make it 17 months.

(4) Document dated 15.12.2012 addressed by the plaintiff to M/s Reliance Industries Ltd at page 142, in respect of item no.3 'Capacity Hired' it was mentioned 1200 MT. Item no.4 "Period of Contract' it was mentioned 1 Month. In the uploaded document at page 195, as far as item no.3 'Capacity Hired', figure '1' was overwritten by figure '7' to make it 7200 MT. In respect of item no.4 'Period of Contract', figure '8' is added after figure '1' to make it '18' months.

34. Mr. Apte submitted that from paragraphs 18 to 23, the plaintiff has asserted requisite ingredients for establishing prima facie case of established fraud. He submitted that it was not necessary for the plaintiff to upload modified/varied documents, as even otherwise the plaintiff is eligible. The said fact is evident from certificates issued by-

(1) J.N.P.T. on 29.11.2013 (page 223);

(2) Jindal Poly Films Ltd (Page 224);

(3) Alok Industries Ltd (Page 225);

(4) Wellknown Polysters Ltd (page 227); and

(5) Garden Silk Mills Ltd (Page 228).

35. He further submitted that the plaintiff has lodged complaint on 22.12.2013 with Andheri Police Station. He also invited my attention to statement made by Mr. D. Selvaraju on behalf of the plaintiff before Inquiry Officer Mr. P.S.Chauhan, GM, Head PPCL, ONGC, Uran Plant and in particular paragraphs 6 and 9 thereof. He also invited my attention to paragraphs 3.1 and 3.2 of affidavit-in-rejoinder of Mr. Bhupendra R. Pitale dated 17.1.2014 made on behalf of the plaintiff in support of his submission that the plaintiff satisfies the criteria as also the fraud played on plaintiff so as to blacklist it from participating in O.N.G.C.'s future tenders.

36. Mr.Apte further submitted that occasion did not arise for invoking bank guarantee in terms of clause 17.7(b). No loss was caused to O.N.G.C. He submitted that under clause 17.7.(b), the Bid Security can be forfeited by O.N.G.C. if bid is varied or modified in a manner not acceptable to O.N.G.C. **“during the validity period or any extension of the validity duly agreed by the bidder”.** In the present case, Tender Committee has rejected all the bids on 5.9.2013. Defendant no.1 also cannot invoke 17.7.(b) by way of penalty and punishment. The plaintiff is not beneficiary of modifications/variations in uploaded documents. The plaintiff

is even otherwise eligible. He relied upon the following letters dated : -

(1) 14.6.2013 (Page 201);

(2) 25.9.2013 (Page 203);

(3) 30.9.2013 (Page 204)

(4) 11.10.2013 (Page 205)

(5) 11.10.2013 (page 206);

(6) 14.10.2013 (page 208);

(7) 11.11.2013 (page 211);

(8) Complaint dated 22.11.2013 (Page 213).

37. Finally, Mr. Apte invited my attention to endorsement dated 14.10.2013 made on the letter dated 12.10.2013 addressed on behalf of the plaintiff to the Chairman and Managing Director Of defendant no.1, which is to the following effect:

> “GGM-PM-URAN.
>
> Mr. Pilani met me today at my office. I informed him about the fraud. He categorically denied having done by him or his employees. But ONGC must investigate immediately and properly. In the meantime he has agreed to extend bid bond. Therefore inquiry must be done in time bound

manner and other (not legible) validity of bid bond,

to take action immediately.

Sd/- 14.10."

He submitted that O.N.G.C admitted that no fraud is played by the plaintiff. For all these reasons, he submitted that no case is made out for interfering with the impugned order.

38. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has instituted suit for perpetual injunction restraining defendant no.1 from invoking bank guarantee. During the pendency of the suit, the plaintiff took out notice of Motion No.4177 of 2013. By the impugned order, the learned trial Judge has issued injunction restraining defendant no.1 from invoking the bank guarantee given by defendant no.2 for the plaintiff. The plaintiff is directed to ensure that the said bank guarantee is kept alive during the pendency of the suit. The short question is whether in the facts and circumstances of the present case, the learned trial Judge was justified in issuing the injunction.

39. As noted earlier, in paragraph 11 the learned trial Judge has rightly recorded that it is a settled position of law relating to bank guarantee that a person seeking injunction against

invocation of bank guarantee is required to show a prima facie case of established fraud and an irretrievable injury. The question is whether in the present case, the plaintiff has established the said fact in view of the decision relied by Mr.Bharti.

40. In the case of **U.P.C.F. Ltd.** (*supra*), the appellant, a State Government Enterprise entered into a contract with the respondent on or about 17.5.1983 with the respondent, a private limited company for the supply and installation of a vanaspati manufacturing plant at a place in the district Nainital. The contract bond contemplated guaranteed performance of the work at various stages in accordance with the time schedule prescribed therein and provided for completion and commissioning of the plant by 15.5.1984. According to the appellant, the time was essentially and indisputably the essence of the contract. As per the terms and conditions of the contract bond, according to the appellant, the respondent was to furnish a performance bank guarantee for Rs.16.5 lakhs and yet another bank guarantee of Rs.33 lakhs as security for the monies advanced by the appellant to respondent for undertaking the work. Both these two guarantees as also the contract bond entitled the appellant to invoke them and call for their realization and encashment on

the failure of the respondent to perform the obligations for which the appellant was made the sole Judge. It was the case of the appellant that the respondent defaulted at various stages and finally failed to complete the work within the stipulated time. The appellant invoked the two bank guarantees, one after the other and thereafter proceeded to have the plant completed. According to the appellant, the plant could actually be commissioned for commercial production in July/August, 1985. The Apex Court (Coram: Sabyasachi Mukharji and Shetty, JJ.) allowed the Appeal. Hon'ble Mr. Justice Mukharji (as the learned Chief Justice then was) observed thus:

> “Under the terms agreed to between the parties, there is no scope of injunction. The High Court proceeded on the basis that this was not an injunction sought against the bank but against the appellant. But the net effect of the injunction is to restrain the bank from performing the bank guarantee. That cannot he done. One cannot do indirectly what one is not free to do directly. The respondent was not to suffer any injustice which was irretrievable. The respondent can sue the appellant for damages. There cannot be any basis in the case for apprehension that irretrievable damage would be caused, if any.
>
> An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except in a case of fraud or a case of a question of apprehension of irretrievable injustice has been made out. This is the well-settled principle of the law in England. This is also the well-settled principle of law in India. *No fraud and no question of irretrievable injustice was involved in the*

case."

(emphasis supplied)

41. It was further observed as under :

> "In order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of bank guarantee, there should be a serious dispute and a good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties; otherwise, the very purpose of bank guarantees would be negatived and the fabric of trading operation would be jeopardised. The commitments of the banks must be honoured free from interference by the courts; otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases, that is, in cases of fraud or in cases of irretrievable injustice that the court should interfere. This is not a case where irretrievable injustice would be done by enforcement of the bank guarantee. This is also not a case where a strong prima facie case of fraud in entering into a transaction was made out. The High Court should not have interfered with the bank guarantee. The judgment and order of the High Court set aside. The order of the Civil Judges restored."

42. Honourable Mr. Justice Shetty concurring with Mukharji, J. (as the learned Chief Justice then was) observed thus:

> "The modern documentary credit had its origin from letters of credit. The letter of credit has developed over hundreds of years of international trade. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for a buyer and seller. It was found difficult for a buyer to pay for goods prior to their delivery. The bank's letter of credit came to bridge this gap. In such transactions, the seller (beneficiary) receives payment from the issuing bank when he presents a demand as per the terms of the documents. The bank must pay if the documents are in order and the terms of credit are

satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the seller and the buyer must be settled between themselves. The Courts, however, in carving out an exception to this rule of absolute independence, held that if there has been a "fraud in the transaction", the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else."

43. It was further observed:

> "In modern commercial transactions, various devices are used to ensure performance by the contracting parties. The traditional letter of credit has taken a new meaning. Stand-by letters of credit are also used in business circles. Performance bound and guarantee bond are also devices increasingly adopted in transactions. The Courts have treated such documents as analogous to letter of credit."

"Whether it is a traditional letter of credit or a new device, like performance bond or performance guarantee, the obligation of the bank appears to be the same. Since the bank pledges its own credit, involving its reputation, it has no defence except in the case of fraud. The nature of the fraud that the courts talk about is the fraud of an "**egregious nature as to vitiate the entire underlying transaction". It is the fraud of the beneficiary, no fraud of somebody else**. The bank cannot be compelled to honour the credit in such cases. In such cases, it would be proper for the bank to ask the buyer to approach the court for an injunction. The court, however, should not lightly interfere with the operation of irrevocable documentary credit. In order to restrain the operation of irrevocable letter of credit, performance bound or guarantee, there should be a serious dispute to be tried and there should be a good prima facie act a fraud."

(emphasis supplied)

44. The said decision was referred and quoted in extenso by the Apex Court in the case of **Svenska Handelsbanken** (*supra*). In paragraphs 97 and 98 it was observed thus:

> "97. The High Court was not right in working on mere suspicion of fraud or merely going by the allegations in the plaint without prima facie case of fraud being spelt out from the material on record.
>
> 98. The High Court was also in error in considering the question of balance of convenience. In law relating to bank guarantees, a party seeking injunction from encashing of bank guarantee by the suppliers has to show prima facie case of established fraud and an irretrievable injury. Irretrievable injury is of the nature as noticed in the case of Itek Corporation (supra). Here there is no such problem. Once the plaintiff is able to establish fraud against the suppliers or suppliers-cum-lenders and obtains any decree for damages or dimunition in price, there is no problem for affecting recoveries in a friendly country where the bankers and the suppliers are located. Nothing has been pointed out to show that the decree passed by the Indian courts could not be executable in Sweden."

45. In the case of **O.N.G.C.Ltd** (*supra*), the learned Single Judge of this Court considered decision of **U.P.C.F.** *(supra)* from paragraph 20 onwards. After referring to the decision of **U.P.C.F.** (*supra*) and **Svenska Handelsbanken** (*supra*), in paragraph 21 it was observed thus:

> "21. Perusal of the above quoted paragraphs of the judgment of the Supreme Court clearly shows that invocation of the bank guarantee cannot be interfered with by the Court, unless there is an established fraud or irreparable injustice involved in the case. It is thus

clear that mere allegation of fraud is not enough to issue an injunction against invocation of bank guarantee. The allegation of fraud must be established at least prima facie. It is further to be seen here that the result of invocation of the bank guarantee is that the amount for which the bank guarantee is given is recovered. Therefore, the party which has given the bank guarantee suffers loss of money. Loss of money never causes any irreparable injury. An interim order of injunction can be made only when the court or the tribunal finds that apart from the fact that the applicant making out a strong prima facie case and showing that the balance of convenience is in favour of grant of the temporary injunction, the applicant would suffer an irreparable injury if the temporary injunction is not granted to him. Thus for grant of temporary injunction a finding that in case injunction is not granted, the applicant would suffer irreparable injury is a condition precedent. While granting the interim order by the order impugned the Arbitral Tribunal has not recorded any such finding. Therefore, even if it is assumed that the Appellant was not justified in invoking the bank guarantee, the Arbitral Tribunal while deciding the matter finally would be within its power in making an order for payment of that amount by the Appellant to the Respondents with interest at an adequate rate. Considering that the Appellant is ONGC, there can be no doubt that the decree for any amount that may be made would be executable and thus, there is no possibility of the Respondents suffering any irreparable injury due to invocation of the bank guarantee. In my opinion, therefore, as there is no possibility of the Respondents suffering any irreparable injury, there was no justification whatsoever for making an order restraining the Appellant from invoking the bank guarantee. The impugned order made by the Arbitral Tribunal is, therefore, liable to be set aside.”

46. Applying these principles to the facts of the present case, it is necessary to find out whether the plaintiff has made out a prima facie case of established fraud and irretrievable injury.

47. As noted earlier, the plaintiff had given bank guarantee on 13.2.2013. Relevant clauses 1 and 2 read as under :

> "1. .. … and Bidder having agreed to furnish as a condition precedent for participation in the said tender an unconditional and irrevocable bank guarantee of Indian Rupees 82,89,000/- (Indian Rupees eighty Two lacs Eighty Nine thousand only) for the due performance of Bidder's obligations as contained in the terms of the Notice Inviting tender (NIT) and other terms and conditions contained in the Bidding documents supplied by ONGC which amount is liable to be forfeited on the happening of any contingencies mentioned in said documents.
>
> 2. We Central Bank of India registered under the laws of 1970 having head/registered office at Chandra Muki, Nariman Point, Mumbai-400021 (hereinafter referred to as 'the Bank' which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and permitted assignees) guarantee and **undertake to pay immediately on first demand by ONGC, the amount of Indian Rs.82,89,000/- (Indian Rupees Eighty Two lacs Eight Nine thousand only) in aggregate at any time without any demur and recourse, and without ONGC having to substantiate the demand. Any such demand made by ONGC shall be conclusive and binding on the Bank irrespective of any dispute or difference raised by the Bidder."**
>
> (emphasis supplied)

48. Perusal of the bank guarantee, prima facie, shows that the guarantee was independent of the contract involving only defendant no.2-Bank and defendant no.1 and that it can be invoked by defendant no.1. In the case of *Hamzeh Melas & Sons v British Imex Industries Ltd*, **(1958) 2 QBD 127**, the

Court of Appeal emphasized that an elaborate commercial system had been built up on the footing that a confirmed letter of credit constituted a bargain between the banker and the vendor of the goods, which imposed upon the banker an absolute obligations to pay, irrespective of any dispute there might be between the parties whether or not the goods were up to contract. The principle was that commercial trading must go on on the solemn guarantee either by the letter of credit or by bank guarantee or irrespective of any dispute between contracting parties whether or not the goods were up to contract. The banks cannot be absolved of their responsibility to meet the obligations.

49. The said question was again considered by the Queen's Bench Division by Hon'ble Mr Justice Kerr in *R.D.Harbottle (mercantile) Ltd Vs. National Westminister Bank Ltd*, **(1977) 2 All ER 862** wherein it was observed thus :

> “(i) Only in exceptional cases would the courts interfere with the machinery of irrevocable obligations assumed by banks. In the case of a confirmed performance guarantee, just as in the case of a confirmed letter of credit, the bank was only concerned to ensure that the terms of its mandate and confirmation had been complied with and was in no way concerned with any contractual disputes which might have arisen between the buyers and sellers. Accordingly, since demands for payment had been made by the buyers under the guarantees and the plaintiffs had not established that the demands were fraudulent or other special circumstances, there were no grounds for continuing

the injunctions... ..”

50. In *Edward Owen Engineering Ltd. v. Barclays Bank International Ltd*, **(1978) 1 All ER 976**, a Bench of the Court of Appeal consisting of Lord Denning M.R., Browne and Geoffrey Lane, L.J. Held that a performance guarantee was similar to a confirmed letter of credit. Where, therefore, a bank had given a performance guarantee it was required to honour the guarantee according to its terms and was not concerned whether either party to the contract which underlay the guarantee was in default. The only exception to that rule was where fraud by one of the parties to the underlying contract had been established and the bank had notice of the fraud. The said decisions were referred by the Apex Court in the case of U.P.C.F. Ltd (supra). In paragraph 53 of that case, Hon'ble Mr Justice Shetty observed that the nature of the fraud that the Courts talk about is fraud of an **"egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary, not the fraud of somebody else**.

(emphasis supplied)

51. It is not in dispute that in terms of clause E.4 of Bid

Evaluation Criteria in Annexure IV (Page 105 of additional compilation) defendant no.1 sought clarifications as in its opinion, the bid contained deficiencies/ambiguity with reference to the tender conditions. Defendant no.1 issued letter dated 6.6.2013 giving opportunity to the plaintiff to clarify ambiguity/to furnish confirmation/ deficient documents.

52. It is also not in dispute and is rather evident from the assertions made in the Plaint itself that in pursuance of that requisition, the plaintiff had uploaded the documents which, when compared with earlier documents uploaded/submitted by the plaintiff, shows that there is variation/modification. In paragraph 10 of the Plaint, the plaintiff asserted that the entire documentation relating to the said tender/bid was being handled independently by Mr Duraisamy Selvaraju and the fact that defendant no.1 had once again asked the plaintiff to upload copies of the said contracts was not disclosed by Mr Selvaraju to anyone else in the plaintiff's organization. In paragraph 12 of the plaint, the plaintiff further asserted that Mr Selvaraju without letting anybody else from the plaintiff company know, modified the said documents by overwriting and changing the quantifies of capacities hired and/or periods of the contracts. In paragraph 13, the plaintiff has asserted that the hard copies of these

false documents were also submitted by Duraisamy Selvaraju to defendant no.1 on 17.6.2013. In paragraph 18, the plaintiff asserted that the plaintiff was all along clueless about letter dated 6.6.2013 addressed by defendant no.1 which letter was acted upon unilaterally by Mr Selvaraju without taking any other officers of the plaintiff into confidence.

53. Having regard to the allegations of fraud made in the Plaint, referred herein above, I am clearly of the opinion that the learned trial Judge was not justified in granting injunction. The plaintiff has alleged acts and/or omissions of Mr Selvaraju in uploading documents in pursuance of the requisition made by defendant no.1 on 6.6.2013. The fraud alleged is not played by beneficiary, namely defendant no.1 herein. The nature of the fraud that Courts talk about is fraud of an egregious nature as to vitiate the entire underlying transaction. It is fraud of the beneficiary and not the fraud of somebody else.

54. As far as irreparable injury is concerned, the result of invocation of the bank guarantee is that the amount for which the bank guarantee is given, is recovered. The party which has given the bank guarantee, suffers loss of money. Loss of money never causes any irreparable injury as held by the learned Single Judge of this Court in the case of **ONGC**

(*supra*). As observed in paragraph 21 of **U.P.C.F Ltd. case** (*supra*), the plaintiff can sue defendant no.1 for damages.

55. As far as special equity in the present case is concerned, the plaintiff admitted in the plaint itself that the documents uploaded as per requisition dated 6.6.2013 contained variations/modifications. Perusal of the bank guarantee prima facie shows that the guarantee was independent of contract involving only defendant no.2 Bank and defendant no.1. Defendant no.1 has invoked the bank guarantee in terms of the bank guarantee. Demand made by defendant no.1 is conclusive and binding on the bank irrespective of any dispute or difference raised by the plaintiff. I do not find any special equity in favour of the plaintiff.

56. Mr. Apte submitted that Tender Committee had rejected all the bids on 5.9.2013. Defendant no.1 has invoked the bank guarantee on 14.10.2013. There was no occasion for defendant no.1 to invoke the bank guarantee. I do not find any merit in the submission for more than one reason. Firstly, as indicated earlier, the bank guarantee is independent contract. Secondly, demand made by defendant no.1 is conclusive and binding on the bank irrespective of any dispute or difference raised by the plaintiff. Thirdly, at the behest of defendant no.1, the plaintiff has extended validity of

the bank guarantee upto 31.1.2014 and during this period, defendant no.1 has invoked the bank guarantee on 14.10.2013.

57. In the case of *Wander Ltd and Anr Vs. Antox India Pvt. Ltd, 1990*, **(Supp) Supreme Court Cases 727**, the Apex court in paragraph 14 has observed as under :

> “.... ... the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial Court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. V Pothan Joseph, (1960) 3 SCR 713 , (SCR 721)
>
> > “... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. V. Jhanaton, 1942 AC 130 ' ... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is

> due only to the application of well settled principles in an individual case'."

58. The said position was reiterated subsequently by the Apex Court in the case of *Ramdeo Food Products (P) Ltd Vs. Arvindbhai Rambhai Patel and Ors*, **(2006) 8 Supreme Court Cases 726** and in particular paragraphs 125 to 127 thereof.

59. In the light of the aforesaid discussion, I am clearly of the opinion that the trial Court has exercised discretion arbitrarily, capriciously and perversely. The trial Court has also ignored the settled principles of law regulating grant or refusal of injunction restraining the party from invoking the bank guarantee.

60. Applying the principles laid down by the Apex Court in the above decisions, viz. (i) **U.P.C.F. Ltd** (*supra*); (ii) **Svenska Handelsbanken** *(supra); (iii)* **Wander Ltd** *(supra)* and by this Court in **O.N.G.C. Vs Jagson Intl. Ltd** (*supra*), I am of the opinion that the learned trial Judge was not justified in issuing injunction. In the result, Appeal succeeds and is allowed. Impugned order dated 22.1.2014 passed by the learned trial Judge is set aside. Notice of Motion No.4177 of 2013 in S.C.Suit No.4367 of 2013 stands dismissed.

61. It is made clear that the findings/observations recorded/made are only tentative and prima facie for the

purpose of the decision of the Notice of Motion for injunction and should not be construed as expression of opinion at all on the merits of the controversy between the plaintiff and defendant no.1. Order accordingly.

62. At this stage, Mr. Khanderparkar orally applies for stay of this order for a period of 8 weeks from today. None appears for the appellant.

63. As the respondents intend to challenge this order before the higher Court, I find that the request made by them is reasonable. In view thereof, notwithstanding dismissal of the Appeal, this order shall remain stayed for the period of 8 weeks subject to the following conditions:

a. Plaintiff shall ensure that the Bank Guarantee is kept alive during the pendency of the Suit as ordered by the trial Court;

b. Defendant No.1 shall be entitled to invoke the Bank Guarantee if intimation regarding its renewal is not received by it 2 weeks prior to date of its expiry and it is found by it that the same is not renewed as ordered by the trial Court;

c. In the meantime, further proceedings of S.C.Suit No.4367 of 2013 pending before the City Civil Court, Greater Mumbai shall remain stayed. Order accordingly.

(R.G.Ketkar,J.)