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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (LODGING) NO.514 OF 2015

Mahanagar Telephone Nigam Ltd.	...Petitioner
V/s.	
M/s.SRV Telecom Pvt. Ltd.	...Respondent

Mr.Gobindram D. Talreja i/b Gobindram D. Talreja & Associates for
the Petitioner.

Mr.Subodh Gokhale for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 22ND SEPTEMBER, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act") the petitioner has impugned the arbitral award dated 4th December, 2014 rendered by the learned arbitrator allowing the claims made by the respondent which were arising out of the encashment of the performance bank guarantee submitted by the respondent.

2. Learned counsel appearing for the petitioner states that under the provisions of the contract entered into between the parties, since the respondent had refused to supply the goods during the extended period, the petitioner was required to invite fresh tender. He submits that under the provisions of the contract, the petitioner is

entitled to encash performance bank guarantee and to forfeit the amount. He submits that since the respondent had admitted the facts of committing breaches before the learned arbitrator, the petitioner was not required to lead any oral evidence to prove the actual loss suffered by the petitioner.

3. It is not in dispute that the petitioner had invited fresh tender for obtaining supply of the goods in question from another contractor. The petitioner did not lead any oral evidence to prove the actual loss before the learned arbitrator, if any, suffered by the petitioner due to non-supply of the material by the respondent.

4. The learned arbitrator has considered the oral evidence led by the respondent and also the judgments of various Courts holding that the alleged loss suffered, if any, is required to be proved. In my view the award rendered by the learned arbitrator is in accordance with law and rendered after following the law laid down by the Supreme Court and various High Courts recorded in the impugned award. Admittedly, the petitioner did not prove actual loss suffered by the petitioner, if any, before the learned arbitrator and thus could not have retained the amount recovered from the encashment of the bank guarantee.

5. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

6. The oral application of the learned counsel for the petitioner for stay of the operation of this order is rejected.

(R.D. DHANUKA, J.)

"Certified to be true and correct copy of original signed order."