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

ARBITRATION PETITION (LODGING) NO.2040 OF 2015

M/s.PBA Infrastructure Limited	...Petitioner
V/s.	
GVK Projects & Technical Services Ltd. & Ors.	...Respondents

Mr.M.M. Vashi, Senior Counsel with Ms.Aparna Deokar i/b M/s.M.P. Vashi & Associates for the Petitioner.

Mr.S.U. Kamdar, Senior Counsel with Mr.Chirag Kamdar, Mr.Farid Karachiwala and Ms.Shoma Maitra i/b Wadia Ghandy & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 30TH OCTOBER, 2015.

P.C. :-

1. The papers are allowed to be produced at 3:30 p.m. in view of the urgency pointed out by learned counsel for the petitioner.
2. By consent of the parties, the arbitration petition is disposed of finally at the *ad-interim* stage.
3. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks injunction against the respondent nos.2 and 3 from paying any amount to respondent no.1-A under the four retention money bank guarantees (Exhibits "B-1" to "B-4").
4. Mr.Vashi, learned senior counsel appearing for the

petitioner invited my attention to the terms and conditions of one of the retention money bank guarantee annexed at Exhibit "B-1" to the petition which is identical to other three bank guarantees insofar as the terms and conditions are concerned.

5. Learned senior counsel also invited my attention to a letter addressed by the respondent no.1 to the petitioner on 28th September, 2015 alleging that in view of the failure of the petitioner to attend to the works listed in Annexures "A", "B1" and "B2", the respondent was left with no other option but to encash the performance bank guarantees and mobilization advance securities with immediate effect. By the said letter, the respondent no.1 also reserved right to encash retention money bank guarantees if the petitioner failed to rectify the defects in the works in a timely manner. He submits that the petitioner has not committed any breach in execution of the work as alleged in the said letter. He submits that in any event, the bank guarantees have been invoked by the respondent no.1-A.

6. Learned senior counsel also placed reliance on another letter addressed by the respondent no.1 on 29th October, 2015 to the petitioner alleging various breaches on the part of the petitioner and informing the petitioner that the petitioner was liable to pay various amounts to the respondent no.1.

7. Learned senior counsel for the petitioner submits that since the petitioner has not committed any breach in terms of clause 4.3(c) of the agreement, the respondent no.1-A cannot apply for encashment of any of the four retention money bank guarantees.

8. Mr.Kamdar, learned senior counsel for the respondent no.1 submits that the terms and conditions of the contract cannot be considered by this Court as part of the bank guarantees while considering an application for injunction in respect of the encashment of the bank guarantees.

9. Learned senior counsel submits that invocation of the bank guarantees by the respondent no.1-A is in accordance with the terms and conditions of the bank guarantees. Reliance is placed on clauses 5 to 7 of the said four retention money bank guarantees. He submits that the respondent no.1 has stated the reasons which were required to be stated in the letter of invocation and once such reasons are stated in the letter of invocation, the bank is bound to honour its obligation to make payment under the said bank guarantees to the respondent no.1-A, who is the beneficiary under the said bank guarantees. He submits that thus no injunction can be granted by this Court.

10. A perusal of the four retention money bank guarantees furnished by the petitioner through the respondent nos.2 and 3 in

favour of the respondent no.1-A and more particularly clauses 5 to 7 clearly indicates that the said bank guarantees could be invoked by the beneficiary by stating in the letter of invocation that the amount claimed was due and payable by the petitioner to the beneficiary. A perusal of the letters all dated 29th October, 2015 annexed at Exhibits I-1 to I-4 of the petition clearly indicates that the respondent no.1-A has stated such reasons which were required to be stated in the letter of invocation while applying for encashment of the bank guarantees. In my view each of the said letter of invocation is in accordance with the terms and conditions of the bank guarantees. Since the respondent no.1-A has invoked the bank guarantees in compliance with the terms and conditions of the bank guarantees, the respondent nos.2 and 3 are under an obligation to pay the amounts under the said bank guarantees to the beneficiary.

11. Insofar as the submission of Mr.Vashi, learned senior counsel for the petitioner that since the petitioner has not committed any breach under the terms and conditions of the contract and thus on that ground the respondent no.1-A could not have invoked the bank guarantees is concerned, in my view the provisions of the main contract cannot be read in the bank guarantees for the purposes of deciding the issue of injunction. The bank guarantees executed by the petitioner in favour of the respondent no.1-A itself are independent

contracts and thus this Court only has to consider as to whether the terms and conditions of the said bank guarantees are complied with or not. In my view the invocation is in terms of the bank guarantees and thus this submission of learned senior counsel for the petitioner has no merits.

12. Insofar as the submission of learned senior counsel for the petitioner that the bank guarantees could not have been invoked by the respondent no.1-A is concerned, a perusal of the bank guarantees clearly indicates that the respondent no.1-A was the beneficiary under the bank guarantees and the same has been rightly invoked by them for encashment.

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

14. The parties to the present proceedings shall implement the order on the authenticated copy of this order.

(R.D. DHANUKA, J.)