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

\+ W.P.(C) 813/2015 and CM No.1414/2015

BRIDGE & ROOF COMPANY (INDIA) LTD. ..... Petitioner

Through: Ms. Meenakshi Arora, Sr. Advocate with Mr. Apoorv, Mr. Vikas Shukla and Ms. Seema Sharma, Advocates

versus

STATE BANK OF INDIA & ORS. ..... Respondents

Through: Ms. Anjali Bhandari for Mr.Rajiv Kapur, Advocates for R-1

Mr. V.N. Koura with Mr. Sirish Kumar and Mr. Nikhil, Advocates for R-3

Mr. Anurag Ahluwalia, CGSC for R-4

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% **23.04.2015**

1. To be noted, counter affidavit has been filed by respondent no.3, which is, effectively, the contesting party.

1.1 Counter affidavit(s) on behalf of respondent no.1, 2 and 4 have not been filed. The learned counsel appearing for respondent no.1 and 4 say that they do not wish to file a counter affidavit on behalf of the said respondents.

2. Ms. Arora, the learned senior counsel for the petitioner says that the rejoinder need not be filed.

3. I have heard the learned counsel for the petitioner as well as the respondents for some time.

4. What transpires is that clause XII of the mechanism for Permanent Machinery for Arbitration (PMA), which has been put in place by the Department of Public Enterprises, Govt. of India (in short DPE) clearly provides that the invocation of bank guarantee can only be a recourse of last resort.

4.1 In that view of the matter, I have put to Mr. Koura as to whether his client alongwith the petitioner would be willing to take recourse to the remedy provided under the PMA.

4.2 Mr Koura, fairly says that the clause does require disputes between public sector enterprises should be adjudicated upon by taking recourse to the arbitration mechanism. Having said so, Mr. Koura's only concern is that, while disputes are being determined, his client should not be left without a security. In other words, a provision of security of the dues claimed would need to be put in place.

4.3 This aspect of the matter, in my view, can be addressed, if, a condition is put on the petitioner to keep the bank guarantee alive till all inter se disputes are finally adjudicated upon.

4.4 Ms. Arora says that if such a condition is imposed on the petitioner, her client will have no objection.

5. Accordingly, the captioned petition and the pending application are, therefore, disposed of with the following directions :-

(i). Secretary, DPE, will appoint an arbitrator in accordance with the mechanism set forth in the PMA.

(ii). The arbitral tribunal will decide all disputes between the parties as may be raised before them.

(iii). Pending the adjudication of the disputes, interim order dated 27.01.2015 will continue to operate.

(iv). The petitioner will keep the bank guarantee in issue alive not only till the adjudication of the disputes, but also, if necessary, during the consideration of the appeal, if any, preferred. The later part is provided for to secure respondent no.3 in the event of an adverse decision, and in case it decides to prefer an appeal against the decision of the arbitral tribunal.

(v). In case respondent no.3 were to lose the appeal, the petitioner will keep the bank guarantee in issue alive for a further period of eight (8) weeks from the date the award is served upon the parties. This condition is imposed only to enable respondent no.3 to escalate the matter to a higher forum, if deemed necessary.

(vi). In case, eventuality as contemplated in clause (v) were to arise, respondent no.3 will take recourse to appropriate legal proceedings no later than six (6) weeks from the date the decision in the appeal is communicated to the parties herein.

(vii). In eventuality of respondent no.3 succeeding in the appeal, it will not invoke and / or encash the bank guarantee in issue for a period of six weeks from the date when the decision in the appeal is communicated to the parties herein.

6. The captioned petition and the pending application are accordingly disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

APRIL 23, 2015

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