THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.05.2015

+ FAO(OS) 252/2015 & CM 8440/2015

POWER GRID CORPORATION OF INDIA LTD ... Appellant

versus

M/S IVRCL LIMITED ... Respondent

Advocates who appeared in this case:-
For the Appellant : Mr Parag Tripathi, Sr Advocate with Mr Pawan Upadhyay, Mr Rajesh Chhetri and Ms Kanika Tandon
For the Respondent : Sandeep Sethi, Sr Advocate with Mr Amit George

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. We have heard the counsel for the parties. This appeal is directed against the order dated 23.04.2015 passed by a learned Single Judge of this Court in OMP (I) 184/2015. The order passed by the learned Single Judge is as under :-

> "**IA No. 8358/2015 (for exemption)**
>
> 1. Exemption allowed subject to all just exceptions.
>
> 2. The application is disposed of.
>
> **O.M.P.(I) 184/2015**

3. Learned counsel for the Petitioner candidly states that the bank guarantees ('BGs') in question have already been encashed by the Respondent.

4. In the circumstances, the only order that the Court is persuaded to pass at this stage, without expressing any opinion on the merits of the contentions of either party, is that the amount obtained by the Respondent through the encashment of the BGs in question shall be kept by the Respondent in a fixed deposit, in its own name, in a nationalised bank initially for a period of one year which will be kept renewed during the pendency of the arbitral proceedings. Copies of the said fixed deposit receipts for the said amounts will be provided by the Respondent to the Petitioner through counsel within a period of two weeks from today. This order is subject to modification or variation by the Arbitral Tribunal in an application that may be filed by either party under Section 17 of the Arbitration and Conciliation Act, 1996. All the contentions of the parties are left open to be urged in the arbitral proceedings.

5. The petition is disposed of in the above terms.

6. Order dasti."

2. It is evident from the above extract that the bank guarantees in question had been encashed by the appellant herein. The money has been received by the appellant. In order to protect the interests of the parties in the said sum, the learned Single Judge had thought it fit to direct the appellant to keep the same in a fixed deposit in its own name in a nationalized bank, initially for a period of one year, to be kept renewed

during the pendency of the arbitral proceedings, subject to any modification or variation by the Arbitral Tribunal on an application being filed by either party under Section 17 of the Arbitration and Conciliation Act, 1996. The learned Single Judge did not also express any opinion on the merits of the matter and left all contentions open to be urged in the arbitral proceedings.

3. The learned counsel for the appellant submitted that instead of the money being placed in a fixed deposit, the impugned order could be modified by requiring the appellant to give an undertaking that in case of any direction given by the Arbitral Tribunal under Section 17 for placing the money in any manner or with any party, the same would be complied with within three weeks thereafter. It is also contended that the appellant is a public sector undertaking and is not a fly-by-night operator and, therefore, its undertaking would be made good, if the situation arose. It was also contended by the learned counsel for the appellant that whether the money is placed in a fixed deposit or an undertaking is given in its place, it would not, in any way, prejudice the respondent because in either eventuality, the money could not be utilized by the respondent.

4. The learned counsel for the respondent, however, objected to this by submitting that if the money was placed in a fixed deposit, albeit in the name of the appellant and in the appellant's bank, the respondent could still gain some benefit out of it by demonstrating to its banker that certain funds have been kept apart, to which it had a claim. We are not in agreement with the submission made by the learned counsel for the respondent. When the money would be placed in a fixed deposit in the name of the appellant, it is difficult for us to conceive of a situation where such a fund could be taken advantage of by the respondent, particularly when there would be an arbitration of the disputes between them, which was yet to be concluded.

5. Consequently, we feel that, as the placing of the money in a fixed deposit would be of no use to either party, the same need not be placed in a fixed deposit. But, an undertaking shall be given within a week to this Court to the effect that within three weeks of any direction being given by the Arbitral Tribunal or any Court, the funds, which were obtained by the appellant upon the encashment of the bank guarantees, would be placed as per the directions given by the Arbitral Tribunal or any Court. The period of three weeks has been sought by the appellant in order to take

any remedial measures by way of an appeal etc. in case such an order/ direction is passed/given.

With this modification to the impugned order, the appeal stands disposed of accordingly.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 22, 2015
SR