

the respondent no.1 is unable to offer a bank guarantee as directed by this Court. The learned Counsel for respondent no.1 submits that the respondent no.1 has been declared as a sick company and therefore, is presently unable to furnish a bank guarantee.

3. The learned Counsel for applicant - MSEDCL has further pointed out that as of now, the respondent no.1 - company is due and payable to the applicant an amount in excess of Rs.4 Crores towards the electricity supply and other charges. In these circumstances, the learned Counsel submits that the applicant should be permitted to withdraw the amount of Rs.1,68,45,761/- together with interest that may have accrued upon the said amount, for the purposes of adjustment against the dues payable by the respondent no.1 - company to the applicant. This adjustment is towards the amount due for the purposes of voltage surcharge.

4. The respondent no.1 - company has filed an affidavit dated 30/11/2015, in which, they have stated that they have no objection to the applicant withdrawing the amount, provided that the said amount as well as the interest of approximately Rs.39.89 Lacs thereon is not claimed or shown as outstanding in the subsequent bills by the applicant pending the hearing and final disposal of this petition.

5. The learned Counsel for applicant has submitted that it is not possible for them to comply with the aforesaid condition.

However, the applicant is willing to make a statement that in case this petition fails, the applicant will refund the amount now withdrawn along with the interest thereon at the bank rate to the respondent no.1. Further, the learned Counsel for applicant has made a statement that in case the petition is dismissed, the applicant will reverse the entry in their account and further during the pendency of the present petition, will not initiate any coercive proceedings for recovery of the amount of Rs.1,68,45,761/- along with interest that may be accrued on the said amount towards voltage surcharge.

6. The statements made by the learned Counsel for applicant, at least for the present, will afford sufficient protection to the respondent no.1. Accordingly, the said statements are accepted as undertakings to this Court. In addition, the applicant to file a written undertaking of its Managing Director giving an undertaking to the said effect, in this Court. Such undertaking to be filed within a period of four weeks from today.

7. Subject to the aforesaid, the applicant is permitted to withdraw the amount of Rs.1,68,45,761/- along with interest, if any, that may have accrued on the said amount, from the Registry of this Court.

8. Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)