

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

O.A.No.383 of 2015

M/s. P & R INFRAPROJECTS LTD.,
Quiet Office NO.7 1ST & 2ND FLOOR
SECTOR 35-A, CHANDIGARH 160 036
THROUGH ITS DIRECTOR
MR PAVEIJEET SINGH

.. APPLICANT

Vs.

BHARAT HEAVY ELECTRICALS LTD.,
POWER SECTOR - SOUTHERN REGION
690, ANNA SALAI, CHENNAI 35

.. RESPONDENT

Prayer : Original Application filed under Order XIV Rule 8 of OS Rules under Section 9(II)(a)(d) of Arbitration and Conciliation Act, 1996 seeking to pass an order of Interim Injunction to restrain the Respondent from encashing the bank guarantees furnished by the petitioner vide Bank Guarantees issued by Punjab National Bank Larg Corporate Branch RK Road NR Cheema Chowk Ludhiana 141 003 and consequently direct the respondent to not to invoke the clauses 4.2. and 5.0 of SCT 1371(2) of the Contract Agreement dated 09.07.2010.

For Applicant : Mr.A.Kumar
for M/s.Sree and Associates

For Respondent : Ms.Geetha Ava,
for M/s.Ramasubramaniam Associates

A.No.3116 of 2015

BHARAT HEAVY ELECTRICALS LTD.,
POWER SECTOR - SOUTHERN REGION
690, ANNA SALAI, CHENNAI 35

.. APPLICANT

Vs.

M/s. P & R INFRAPROJECTS LTD.,
Quiet Office NO.7 1ST & 2ND FLOOR
SECTOR 35-A, CHANDIGARH 160 036
THROUGH ITS DIRECTOR
MR PAVEIJEET SINGH

.. RESPONDENT

Prayer : Application filed under Order XIV Rule 8 of OS Rules read with Section 9(II)(a)(d) of Arbitration and Conciliation Act, 1996 read with Order XXXIX Rule 4 of CPC seeking to vacate the order of interim injunction dated 01.04.2015 and consequently dismiss O.A.No.383 of 2015.

For Applicant : Ms.Geetha Ava,
for M/s.Ramasubramaniam Associates

For Respondent : Mr.A.Kumar
for M/s.Sree and Associates

COMMON ORDER

1. To be noted O.A.No.383 of 2015 has been filed by an entity known as P & R Infra Projects Limited (in short "PRIPL"). By virtue of the said application, the following relief is sought :

".... pass an order of interim injunction to restrain the respondent from encashing the bank guarantees furnished by the petitioner vide Bank Guarantees vide BG.No.44511LG003310 dated 29.7.2010 for

Rs.69,35,000/- and B.G.No.44511LG001511 dated 10.3.2011 for Rs.1,37,20,000/- issued by Punjab National Bank, Large Corporate Branch, R.K.Road, NR.Cheema Chowk, Ludhiana-141 003 and consequently direct the respondent to not to invoke the clauses 4.2. and 5.0 of SCT 1371(2) of the Contract Agreement dated 09.07.2010."

2. This Court, by an order dated 04.01.2015, granted interim injunction restraining the respondent in the said application, i.e., Bharat Heavy Electricals Limited (in short "BHEL") from encashing the subject Bank Guarantees.

3. BHEL has filed an application being : A.No.3116 of 2015 seeking vacation of order dated 01.04.2015 and consequently, dismissal of O.A.No.383 of 2015.

4. At the hearing held on 21.07.2016, detailed submissions were advanced by the learned counsel for the PRIPL, whereupon, the following order was passed, though, it was wrongly captioned as an order passed in A.No.3116 of 2015, which is, as indicated above, an application moved by BHEL for vacation of the order dated 01.04.2015. For the sake of convenience, the extract of the said order dated 21.07.2016 is set forth

hereafter :

"1. The only ostensible ground for seeking injunction of the subject Bank Guarantee is the alleged failure of respondent/BHEL in paying a sum equivalent to Rs.10,00,00,000/- (Rupees ten Crore only), to the applicant.

2. The letter of invocation dated 05.07.2014, which has been issued by the respondent/BHEL, to the concerned Bank, briefly, articulates that the applicant has not completed the work under the contract in issue.

3. There is no ground of established fraud known to the bank or, irretrievable harm or, a case of special equity made out by the applicant.

3.1. Grievances raised by the applicant relate to the underlying dispute pertaining to the main contract obtaining between the parties herein. Prima facie, there is no case for injunction.

4. At this stage, learned for the applicant says that he would attempt, a settlement in the matter with the respondent.

4.1. It is his submission that in case, he is not able to reach a settlement before the next date of hearing, he would not press the application any further.

5. Learned counsel for the respondent/BHEL does not oppose the accommodation sought by the counsel for the applicant.

6. Accordingly, re-notify on 04.08.2016.

7. Interim order, already granted, shall continue to operate till the next date of hearing."

5. This order has been put to the learned counsel for PRIPL.

6. Mr.A.Kumar, who appears for PRIPL, asserts that a settlement is about to be concluded between the parties.

7. Ms.Geetha, who appears for BHEL, has indicated to me that no settlement has been reached. Learned counsel's submission is based on instructions received from Mr.Mahendra Kumar, Executive (Law), BHEL.

7.1. As a matter of fact, Ms.Geetha has placed before me, inter alia, a copy of the communication dated 28.10.2016, issued by PRIPL to BHEL, which is, indicative of the fact that there is no settlement reached in the matter.

8. The only submission made, today, by the learned counsel for PRIPL, is that, PRIPL has a counter-claim against BHEL, which is more than the value of the subject Bank Guarantees.

9. As indicated on 21.07.2016, there is no ground made out of established fraud known to the Bank or irretrievable harm, which may have been caused to PRIPL, or that, it is a case of special equity.

9.1. BHEL is a public sector undertaking, and therefore, if PRIPL were

to make a counter-claim and succeed, to my mind, BHEL would be good for its money. Therefore, in my opinion, there is no case of special equity made out by PRIPL.

9.2. It is not even the case of PRIPL that the subject Bank Guarantees have not been invoked in accordance with the terms contained therein.

9.3. The Bank Guarantees are payable without any demur, merely on a demand made by BHEL. Admittedly, the subject Bank Guarantees have been invoked vide communication dated 05.07.2014, wherein, it is indicated that PRIPL has not complied with its contractual obligations.

10. Having regard the aforesaid, I am persuaded to vacate the interim order dated 01.04.2015. It is ordered so.

11. Accordingly, BHEL's application being : A.No.3116 of 2015 is allowed, while O.A.No.383 of 2015 filed by PRIPL, is dismissed.

08.11.2016

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Note : Issue order copy today

RAJIV SHAKDHER, J.

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O.A.No.383 of 2015
and A.No.3116 of 2015

08.11.2016