

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.9396 OF 2016

ORDER:

This writ petition is filed questioning the invocation of the bank guarantee by letter dated 26.02.2016.

The relationship between the petitioner and the respondent-Corporation is governed by the parties as per the agreement dated 28.12.2015. As per Clause 14.5 of the agreement, in the event of any dispute it has to be referred to an Arbitrator and in the present case, the authorities even considered the explanation dated 04.02.2016 submitted by M/s. Bajranglal Radheshyam Dall Mill, Hyderabad.

The reason for invocation of the bank guarantee is for termination of the agreement in their favour and further blacklisting of the petitioner on the ground of non fulfilment of contractual obligation and due to quality complaints on the supplier and subleasing of their contract.

The learned counsel for the petitioner submits that the petitioner had invoked the Arbitration Clause and sought appointment of the Arbitrator. The relief which is sought in the writ petition being to restrain the respondents-authorities from giving the invocation of the bank guarantee, the same is required to be considered in terms of the bank guarantee.

Clause 4 of the Bank Guarantee which reads as under:

“We, the Corporation Bank, Banjarahills, Hyderabad, further agree with the Corporation that the corporation shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions with the mutual consent of the parties or to extend time of performance by the said Dall Supplier from time to time or to postpone for any time or from time to time any of the powers exercisable by the Corporation against the said Dall Supplier and to forbear or enforce and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Dall Supplier or for any act of forbearance or omission on the

part of the Corporation or any indulgence by the Corporation to the said Dall Supplier or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us, subject, however, to clause No.6 herein below.”

Reading of the above clause would leave no manner of doubt that when the bank guarantee is invoked for whatever reasons, the bank is obliged to pay the same on demand and without demur.

Now it is well settled by the judgment of the Supreme Court that the bank cannot invoke the bank guarantee except in the case of fraud and irreparable loss. So far as loosing of money has been explained as falling within the extra irreparable loss. There is no allegation of fraud in the present case. There is no mention anywhere in the affidavit that the fraud on the part of the Corporation either in noticing the petitioner to enter into the contract or in the process of execution of the work. It is only specific contention of the petitioner that notwithstanding the fact that the petitioner denied anything to do with the transaction with the Hanuman Agro Industries, Gorekunta. These are the aspects which are required to be sorted out in the arbitration proceedings. Even assuming that there is termination of the agreement and invocation of the bank guarantee is wrongful, the remedy is only invocation of the arbitration clause as in the face of the arbitration agreement and in the absence of there being an allegation of fraud on the part of the Corporation interdicting of encashment of the bank guarantee as held by the Supreme Court. I see no reasons to interfere with the matter.

Accordingly, the writ petition is dismissed. However, the observations made by this Court in dismissal of the writ petition are only prima facie and they shall not bar the petitioner to avail the remedies as available in law. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Dated:04.04.2016

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Date:04.04.2016

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