IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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CWP No.22869 of 2013
Date of Decision:17.11.2016

Punjab State Warehousing Corp. Chd. .....Petitioner

Vs.

Punjab National Bank and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. R.S. Bhatia, Advocate for respondents No.1 and 2.

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<u>RAKESH KUMAR JAIN, J.(Oral)</u>

The petitioner has challenged the orders dated 21.9.2013 and 28.9.2013 passed by respondent No.2 declining to invoke the Bank Guarantee on behalf of respondent No.3.

In brief, the petitioner made an application to respondent No.1 in terms of an arbitration award dated 12.9.2013 in which the following order was passed:-

> "Adverting to the mode of recovery of the award amount of Rs.62,70,139/-, it is again pertinent to point out that the respondents had already furnished unconditional and irrevocable Bank Guarantee dated 17.9.2012 for Rs.1,00,00,000/- (Rupees One Crore) issued by the Large Corporate Branch, Punjab National Bank, Sector-17B, Chandigarh subject to the finality of the arbitration proceedings with respect to reserved storage capacity availed

by LEAF at Khanna-I, II & III with further undertaking that the Bank Guarantee can be invoked to the extent of the finality of the award, if passed, against LEAF in the final proceedings. Since the final award is being passed against LEAF in all the four claims and as such it is further held that the claimant is entiteld to forthwith realize the total awarded amount pertaining to all the four cases after invoking the Bank Guarantee No.42041LG004712 dated 17.9.2012, which is due to expire on 17.9.2013, and appropriate the same towards by way of security towards House Tax dues, for which the respondent may ultimately be held liable, as per undertaking of the respondent (LEAF). It is, however, further directed that in case, the appeal filed by the claimant challenging the House Tax imposed by the Municipal Authority is finally allowed then in that case the amount retained by the claimant by way of security shall be refunded to LEAF at par and likewise, the respondent (LEAF) shall also be liable to clear the dues qua which corporate guarantee has also been furnished, which shall be got renewed by the respondent in favour of the claimant. A duly signed copy of the award is being placed on all the files and a copy thereof is also being dispatched to the parties."

In response thereto, respondent No.1 stated vide letter dated 21.9.2013 (Annexure P.7) that the guarantee has not been invoked in terms of the Bank Guarantee dated 17.9.2012 issued by them, therefore, it was not possible for them to make the payment as per the claim of the petitioner.

The representation made by the petitioner was similarly declined vide order dated 28.9.2013 (Annexure P.9). Aggrieved against both the orders, the present petition has been filed in which upon notice, the respondents have made the following averments in para 9 of the reply:-

> "That the facts stated in para 9 of the petition is matter of record. It is however submitted that in the final award the following amount has been held to be payable:
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> | | |
> |---|---|
> | Khanna-I | 4,03,993.00 |
> | Khanna-II | 26,36,904.00 |
> | Khanna-III | 12,44,887.00 |
> | Total | 42,85,784.00 |
>
> The bank is not concerned with the claim qua Samrala. Thus the total liability as per the arbitration award in respect of 3 godowns of which the bank had given the guarantee cannot be more than 42,85,784.00. The award given to the extent that the petitioner can invoke the bank guarantee in all the 4 claims is without any basis. Moreover the observations of the arbitrator that the amount be appropriated towards the house tax dues is also without any basis. It is submitted that the bank guarantee was given in order to allow lifting of stocks and the liability of the bank is related to only 3 godowns in respect of which the bank guarantee has been given. Therefore, the claim of Rs.1 crore is absolutely uncalled for."

Learned counsel appearing for the Bank has submitted that the Bank is liable only in terms of the bank guarantee in respect of Khanna-1, Khanna-II and Khanna-III and that too after the finality of the arbitral award if passed against respondent No.3 in the final proceedings. Although counsel for the petitioner has vehemently argued that the Bank is liable to honor the arbitration award in toto but he has failed to cite any law in this regard. Thus, in my considered opinion, the Bank is liable to pay the account of respondent No.3 to the petitioner for the liabilities incurred in respect of Khanna-1, Khanna-II and Khanna-III out of the Bank Guarantee of ₹1 crore. The petitioner may, if so advised, execute the award against respondent No.3 in respect of the remaining dues. Consequently, the present petition is hereby disposed of with a direction to the petitioner to invoke Bank Guarante in terms of the Bank Guarantee No.42041LG004712 dated 17.9.2012 within a period of 15 days from today for recovery of dues of Khanna-1, Khanna-II and Khanna-III and in case the petitioner invokes the bank guarantee within the time prescribed by this Court, the Bank is further directed to make the payment to the petitioner in respect of dues of respondent No.3 in respect of Khanna-1, Khanna-II and Khanna-III in terms of the said Bank Guarantee within a period of 15 days thereafter.

With these observations, the present petition is hereby disposed of.

November 17, 2016 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

Renu
2016.11.23 10:06
I attest to the accuracy and
authenticity of this document
Chandigarh