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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) 82/2015 & IA 25812/2015

PUNJ LLOYD LTD

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Rajeev M. Roy, Advocate.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

& ANR

..... Respondents

Through: Mr. Pradeep K. Bakshi with Ms. Prachi
V. Sharma and Mr. K. Pandit, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

25.10.2016

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1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking stay of the bank guarantee (BG) issued in favour of the Respondent No. 1.
2. The interim order passed on 13th March 2015 *inter alia* directing that "subject to the Petitioner keeping the bank guarantee bearing SR No. 556880, BG No. 0007BG0016190 for an amount of Rs. 4,96,63,412 alive, the Respondents are directed to maintain *status quo* as on date with regard to invocation of the said bank guarantee till the next date of hearing.
3. At the subsequent hearing on 1st July 2015 the Court directed that a joint

inspection was to be undertaken for the purpose of determining the defective work as alleged by the Respondent No. 1. It was to ascertain to what extent the defective work pointed out in the defect liability period has been rectified and what defective work remained to be identified.

4. As noted in the subsequent order dated 22nd February 2016 a joint inspection report dated 17th October 2015 noted the financial implication in the defective period as Rs. 4,98,29,139 which was higher than the Bank Guarantee in question.

5. Consequently, according to Respondent No. 1, even going by the decision of the Supreme Court in *Fenner (India) Limited v. Punjab and Sind Bank (1997) 7 SCC 89* since the claim of Respondent No. 1 would be higher than the Bank Guarantee there is no justification for stay of the encashment of the unconditional Bank Guarantee.

6. The case of the Petitioner is on the other hand as noted in the order dated 22nd February 2016 that the snag list was prepared on 22nd April 2011 and therefore, the valuation of implication has to be assessed as of the year 2011 and not for the period of inspection, i.e., October 2015. It is plain, therefore, that the dispute between the parties is whether the value of the extent of the defective work is as determined in the inspection report dated 17th October 2015 or as claimed by the Petitioner.

7. In the considered view of the Court, the above dispute cannot be examined in the present petition and therefore, will have to be examined in

the arbitral proceedings. It is to be noted that the Petitioner had till date not invoked the arbitration clause seeking reference of the disputes to arbitration.

8. Mr. Sandeep Sethi, learned Senior counsel for the Petitioner states that the Petitioner seeks the disputes to be resolved through negotiations. However, that has not succeeded.

9. The Court does not see that any purpose would be served in keeping the petition pending as it is plain that the parties will have to go in for arbitration without any undue delay. The Court is also not satisfied that any case is made out for continuation of the interim direction as regards encashment of the BG. Consequently, the interim order passed on 13th March 2015 and continued thereafter is hereby vacated.

10. The petition is dismissed.

11. It is made clear that anything stated in the present order will not influence the final decision that may be taken in the arbitral proceedings.

OCTOBER 25, 2016
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S.MURALIDHAR, J