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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3353/2016 & C.M.Nos.14324-14326/2016

M/S SHIV ELECTRIC

..... Petitioner

Through Mr.Kunal Anand, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr.Bhagvan Swarup Shukla, CGSC
with Mr.Ranchit Goel, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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25.04.2016

Present writ petition has been filed challenging the letter dated 31st March, 2016 whereby the respondent no. 3 has forfeited the performance bank guarantee furnished by the petitioner and has further restrained the petitioner from carrying out any work under the contract on the ground of delay in execution of performance of tasks mentioned in the contract.

Learned counsel for the petitioner states that the petitioner was forced to execute the Second Performance Bond in favour of the respondent.

However, this Court is of the opinion that the said fact cannot be decided in the writ proceedings inasmuch as it entails serious disputed questions of facts.

It is settled law that it is only in exceptional cases that is to say in case of fraud or in case of irretrievable injustice that the encashment of the bank guarantee is stayed. It has also been held in catena of judgments that the underlying contract is independent from the bank

guarantee issued by the bank.

Consequently, the present writ petition and the applications are dismissed with liberty to the petitioner to file appropriate proceedings in accordance with the law.

MANMOHAN, J

APRIL 25, 2016
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