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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 176/2016
MIS. GANGOTRI ENTERPRISES LTD - M/S. D.P. CHOPRA - JV
..... Petitioner

Through: Mr. Rajshekhar Rao, Adv. with Mr.
Subhiksh Vasudev & Ms. Gauri Puri,
Advts.

versus

THE DY. CHIEF ENGINEER/CONST.,
..... Respondent
Through: Mr. Jagjit Singh, Senior Standing
Counsel with Mr. Preet Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **12.05.2016**

1. This is a petition filed by the petitioner seeking the following reliefs:-

“WHEREFORE, in view of the above mentioned facts and circumstances and in the interest of justice, it is most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to Pass appropriate ad-interim (and ex-parte, if necessary) orders/directions as interim protection by restraining the Respondents from encashing and realizing the proceeds of the following Bank Guarantees being (i) BG No.120127IBGA00020 dated 17.02.2012 and valid till 31.05.2016 and issued by IDBI Bank Limited, New Delhi towards mobilization advance, (ii) BG no.16090100000529 dated 04.01.2013 issued by Axis Bank Limited, New Delhi and valid till 31.05.2016 towards mobilization advance and (iii) BG no.00070100006200 dated 22.03.2011 issued by Axis Bank Limited, New Delhi and valid till 31.05.2016 towards performance security, respectively till the adjudication of the disputes arising out of Contract Agreement No.74-W/6/168/WA/TKJ dated 13.10.2011 for "Widening of RUB

consisting RCC Box no.1 of size 9.50X 4.75m (internal dimensions) and Box no.2 & 3 of size 9.00 X 5.75m (internal dimensions) each & Box no.4 of size 7.50m X 4.75m (internal dimension) by box pushing technique near Delhi Kishanganj Station" between the parties."

2. The matter was listed yesterday when Mr. Jagjit Singh sought some time to seek instructions. He has filed a counter affidavit along with six annexures in the Court. The same is taken on record. Let the same be scanned and uploaded on the computer.
3. The only submission made by Mr. Raj Sekhar Rao, learned counsel appearing for the petitioner is that the petitioner, had vide its letter dated January 14, 2015 requested the respondent for foreclosure of the Contract. According to him, the said communication was followed by reminders. Unfortunately, the petitioner did not receive any decision on the said request. In the absence of any request, the attempt of the respondent to invoke the bank guarantee(s) was not tenable and it was under these circumstances, the present petition has been filed.
4. Mr. Jagjit Singh, learned Senior Standing Counsel appearing for the respondent would draw my attention to page 7 of the counter-affidavit filed by the respondent to state that a communication dated October 14, 2015 was sent to the petitioner informing the foreclosure of the Contract. According to him, this document has not been referred to, in the petition. Mr. Rao,

dispute the receipt of this document. Be that as it may, Mr. Singh has drawn my attention to page 87 of the counter-affidavit to contend that an amount of Rs.2,04,28,570/-, is yet to be recovered against mobilisation advance. He also states, that amount payable to the petitioner, including security deposit, earnest money and the final bill is only Rs.89,00,579/-. He states, if the amount payable to the petitioner is reduced from the recoveries to be made by the respondent, an amount of Rs.1,15,27,991/- is still payable to the respondent and against this amount only, one of the Bank Guarantee bearing No. 120127IBGA00020 dated December 17, 2012, the term of which, expires on May 31, 2016 sought to be invoked by the respondent. Mr. Jagjit Singh, on instructions from Mr. Rakesh Yadav, Dy. Chief Engineer, Construction states, the respondents has no intention to encash the other two Bank Guarantees i.e (i) BG no.16090100000529 dated 04.01.2013 for an amount of Rs.1,20,51,167/- (validity uptill July 1, 2016) and (ii) BG no.00070100006200 dated 22.03.2011 for an amount of Rs.1,07,59,570/- (validity uptill June 30, 2016) as on date. The statement is taken on record.

6. Noting the aforesaid submissions and the position of law on invocation of Bank Guarantee, being well settled in terms of the judgment of this Court in ***GMR Kishangarh Udaipur Ahmedabad Expressway Ltd. Vs.***

National Highway Authority of India, OMP No. 1234/2012, decided on June 29, 2015, I do not see any merit in the petition, insofar as the challenge to the Bank Guarantee bearing No.120127IBGA00020 dated December 17, 2012, is concerned.

7. The petition is dismissed.

V. KAMESWAR RAO, J

MAY 12, 2016/ak