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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB. A. (COMM.) 24/2016**

RATTANINDIA POWER LTD Petitioner

Through Mr.Rajat Navet, Adv. with
Mr.Jevesh Nagrath & Mr.Dalbir
Thakran, Adv.

versus

BHARAT HEAVY ELECTRICALS LTD Respondent

Through Mr.Punit D. Tyagi, Adv. with
Mr.Ambarish Pandey, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **07.09.2016**

I.A. No.11034/2016 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

I.A. No.11033/2016 (u/s 152 CPC, by appellant)

The abovementioned application has been filed on behalf of the appellant under Section 152 read with Section 151 CPC for clarification/correction of the judgment dated 29th August, 2016 in paras 15, 26 and 27 thereof.

Para 38 of the written submissions filed by the appellant is reproduced here as under:-

“38. Without prejudice to the above, the Appellant had before the Arbitral Tribunal as well as before this Hon'ble Court made a without prejudice offer to the Respondent that in case the Respondent consented to keeping the Advance Bank Guarantees (ABGs) under both the Supply Contract and the Services

Contract alive during the pendency of the arbitration proceedings, the Appellant would accept corporate guarantees for performance in lieu of the performance bank guarantees. The Respondent however, declined the same. This further shows the dishonest and malafide on the part of the Respondent."

It is an undisputed fact that the advance has been received. Thus, the correction is made in this para to the extent that the Advance Bank Guarantees (ABGs) be kept alive and the Performance Bank Guarantees (PBGs) be released, subject to the respondent furnishing an affidavit of undertaking, as already directed.

It appears that on account of an inadvertent clerical error in paras 15, 26 and 27 also of the judgment dated 29th August, 2016 wherein it has occurred that instead of the word "advance" bank guarantee it has inadvertently been mentioned as "performance" bank guarantee; the same is apparent/evident from the written submissions that the bank guarantees which have been given to secure the advance payment were being prayed and have also been directed to be kept alive.

Learned counsel appearing on behalf of the respondent has not seriously opposed the prayer except on merit. He says that under the conditions of Clause 8.1, the appellant was not entitled to the relief which was granted by order dated 29th August, 2016. He submits that he may move the fresh application, if necessary, before the Arbitral Tribunal in this regard. Counsel for the appellant says that such application might not be maintainable, if filed. This Court does not wish to express any opinion on this aspect.

There is a force in the submissions of the learned counsel for the appellant. It was bonafide clerical error. The same is accordingly corrected and it is directed that the words “performance bank guarantees” appearing in para 15 of the judgment dated 29th August, 2016 be replaced with the words “advance bank guarantees”; the words “of securing performance may be kept alive” appearing in para 26 of the said judgment be replaced with the words “of securing advance may be kept alive”, and the words “performance bank guarantees” appearing in para 27 of the said judgment be replaced with the words “advance bank guarantees”, by granting the prayer made in the application.

The application is disposed of.

Dasti, under the signatures of the Court Master.

MANMOHAN SINGH, J.

SEPTEMBER 07, 2016/ka