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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **O.M.P.(I) (COMM.) 409/2016**

LANCO SOLAR ENERGY PRIVATE LIMITED ..... Petitioner
Through: Mr. Akhil Sibal with Mr. Deepak Khurana, Ms. Aditi Sharma and Mr. Sourav, Advocates.

versus

NTPC LIMITED ..... Respondent
Through: Mr. Bharat Sangal, Advocate.

CORAM: JUSTICE S.MURALIDHAR

O R D E R
% **20.10.2016**

IA No. 12900/2016 (for exemption)

1. Allowed subject to all just exceptions.

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2. Notice. Mr. Bharat Sangal, learned counsel accepts notice on behalf of the Respondent.

3. There is a small issue on which the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) has been filed in relation to execution of the two contracts dated 11th April 2016 entered into between the parties by which the Petitioner was to supply and also to install, supply, commission and maintain the equipment for a period of five years.

4. The project admittedly is being executed on turnkey basis by the Petitioner in Madhya Pradesh. As part of the terms of the contracts, the Respondent has to certify and verify the equipment received at the site and it is only thereafter that payment due to the Petitioner will be released. Also it is only after the Respondent hands over the equipment to the Petitioner that its installation at the project site can take place. As part of the terms and conditions of the contracts, the Petitioner has to furnish an indemnity bond for the full value of the equipment that has been received at the site. It is stated by the Petitioner that the equipment in question was received at the site between the period of July 2016 and October 2016.

5. According to the Petitioner, 14.11% of the ex-works price component becomes due to it on installation and successful completion of the performance and guarantee tests. This of course hinges upon the Respondent verifying and certifying the equipment received at the site. It is stated that the Respondent is insisting that the indemnity bond in terms of Clause 31.5 of the GCC has to be stamped in accordance with the laws of Madhya Pradesh.

6. The case of the Petitioner on the other hand is that proforma of the indemnity bond enclosed with the GCC does not specify where it has to be stamped. The Petitioner has furnished indemnity bond on 22th July 2016 for the full value that has been executed and duly stamped in Delhi as per the laws applicable in Delhi. This is refused to be accepted by the Respondent.

7. Mr. Akhil Sibal, learned counsel for the Petitioner contends that the indemnity bond is to be presented if at all and enforced on the happening of

the contingencies expressed in the indemnity bond by the Respondent in Delhi only. The contracts themselves make it clear that the disputes between the parties will be referred to the arbitration and that the Courts in Delhi shall have exclusive jurisdiction. Mr. Sibal submits that in any event the enforceability of the indemnity bond can only happen in the arbitral proceedings in accordance with law in Delhi. Therefore the question of indemnity bond having to be stamped in accordance with the law in Madhya Pradesh cannot be insisted upon.

8. Mr. Sangal, on the other hand refers to the decision of the Supreme Court in ***New Central Jute Mills Co. Limited v. The State of West Bengal 1 SCR 535*** and submits that since the property in respect of which the indemnity bond has to be furnished is located in Madhya Pradesh, the stamp duty applicable in Madhya Pradesh is to be paid and only then the indemnity bond will be accepted.

9. Mr. Sibal offers that in the event of any apprehension of the Respondent that at the stage of seeking enforcement of the indemnity bond, the Respondent will be called upon to pay any differential stamp duty by the authority before whom it is presented, the Petitioner will give an undertaking to this Court, by way of an affidavit in this petition, that the liability for differential duty will be borne by the Petitioner subject to its contesting such determination by the authority, if so permitted in accordance with law.

10. In view of the aforementioned statement made by the Petitioner, it is directed that the Respondent will accept the indemnity bond already

tendered by the Petitioner which has been duly executed and stamped in Delhi in accordance with the laws applicable in Delhi. This is subject to the Petitioner furnishing an undertaking in the present proceedings before this Court, within a period of one week from today, to the effect that in the event that any authority before whom the indemnity bond is sought to be enforced by the Respondent impounds the indemnity bond on the ground of it being insufficiently stamped in accordance with law, the Petitioner will undertake tp pay the differential duty and penalty as may be determined at that stage by the appropriate authority.

11. The petition is disposed of in the above terms. Order be given *dasti.*

S.MURALIDHAR, J

OCTOBER 20, 2016
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