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

\+ O.M.P.(I) (COMM.) 425/2016

VIKRAM SOLAR PVT. LTD. ..... Petitioner

Through: Mr Manoj K. Singh and Mr Nilava Bandyopadhyay, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD. ..... Respondent

Through: Mr Puneet Taneja, Ms Shaheen and Ms Preeti Bhardwaj, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **02.11.2016**

IA No.13442/2016

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

O.M.P.(I) (COMM.) 425/2016

3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act'), *inter alia,* praying as under:-

> "(a) Pass an *ex-parte ad-interim* order directing the Respondent to pay the amount of Rs 30.62 crores, which has become due and payable to the Petitioner on receipt of equipment at the Site;
>
> (b) pass an *ex-parte ad-interim* order directing the Respondent to hand over the equipment received at the

> Project Site to the Petitioner for installing the same at the Project Site in terms of the Contract."

4. The learned counsel appearing for the petitioner submits that the only reason why the respondent (hereinafter 'NTPC') has withheld the amounts payable to it is a controversy regarding the Stamp Duty payable on the Indemnity Bond which has been furnished by the petitioner to NTPC.

5. NTPC had invited tenders for supply and implementation of the Solar Photo Voltaic Projects in Block P-5 and P-6 in Rajasthan. The petitioner participated in the aforesaid tender and was awarded the work for supply of equipment for development of P-5 and P-6 Blocks of 65 MW each Solar Voltaic Projects as well as for the inland transportation, insurance, installation, civil and allied works, testing and commissioning and for the operation and maintenance of the P-5 and P-6 Blocks. NTPC issued a notification of Award dated 31.03.2016 awarding the aforesaid works to the petitioner.

6. Thereafter, the petitioner and NTPC entered into two contracts dated 20.04.2016 at New Delhi. The scope of the first contract entails design, engineering, manufacturing and supply of all equipment/material, mandatory spares and special tools and tackles. The second contract entails installation and operation and maintenance of the said plants.

7. The petitioner states that in terms of the aforesaid contracts, the petitioner has supplied certain equipments to NTPC and a sum of ₹30.62 crores is due and payable by NTPC to the petitioner. In terms of the aforesaid contract, the petitioner has also to furnished an Indemnity Bond dated 25.07.2016 for the full value of the equipments, which is stated to be ₹6,36,85,59,783.06.

8. The learned counsel appearing for NTPC submits that the said equipment are to be supplied for projects in Rajasthan and, therefore, the Indemnity Bond is liable to be stamped under the Rajasthan Stamp Act, 1998. This is stoutly disputed by the petitioner.

9. The learned counsel appearing for the petitioner also referred to an order passed by the Coordinate Bench of this Court on 20.10.2016 in ***Lanco Solar Energy Private Limited v. NTPC Limtied*: O.M.P. (I) (COMM.) 409/2016** wherein a similar petition was disposed of by directing the petitioner to furnish an undertaking that in the event NTPC is called upon at the stage of enforcement of the Indemnity Bond to pay any differential stamp duty, the same would be paid by the petitioner. The learned counsel submits that the present petition be also disposed of on similar terms.

10. The learned counsel appearing for NTPC submits that NTPC is a Government of India Enterprise and, therefore, is concerned to ensure that the provisions of the law are strictly complied with. He submits that since the Indemnity Bond has to be stamped as per the Rajasthan Stamp Act, 1998, the petitioner must ensure that the same is duly stamped.

11. At this stage, it is not necessary to enter into the controversy on the question as to whether the Indemnity Bond is required to be stamped as per the Indian Stamp Act, 1899 or in accordance with the Rajasthan Stamp Act, 1998. However, it is not disputed that the petitioner is liable to bear the stamp duty on the said instrument. It is also patently unfair if the amounts due to the petitioner for supply of equipment are held up solely on the account of the aforesaid dispute.

12. Thus, in my view it would meet the ends of justice if the present petition is disposed of with the following directions:-

(a) That NTPC may approach the concerned Stamp Authority under the Rajasthan Stamp Act, 1998 for due adjudication of the stamp duty payable with prior notice to the petitioner. The petitioner shall also have due opportunity to make its submissions before the concerned Stamp Authority.

In the alternative, either party may invoke the arbitration for adjudication of the disputes in relation to the stamping of the said equipment.

(b) The sums due to the petitioner would not be withheld only on the account of the aforesaid dispute and subject to the petitioner giving an undertaking by way of an affidavit to this Court that it shall forthwith pay the stamp duty as adjudicated by the Stamp Authority – in case NTPC approaches the concerned Stamp Authority in Rajasthan for adjudication of the disputes - or adjudication of the disputes by the Arbitral Tribunal.

13. The learned counsel for the petitioner states that the petitioner would invoke the arbitration clause within a period of 30 days.

14. The present petition is disposed of in terms of the aforesaid directions.

15. *Dasti*.

VIBHU BAKHRU, J

NOVEMBER 02, 2016
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