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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 431/2016

TATA POWER SOLAR SYSTEMS LTD

..... Petitioner

Through: Mr. Gopal Jain, Senior Advocate with
Ms. Ranjana Roy Gawai, Mr. Krishna Keshav and
Ms. Srishti Kapoor, Advocates.

versus

NTPC LIMITED

..... Respondent

Through: Mr. Bharat Sangal with Ms. Vidusi
Garg, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

16.11.2016

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1. The conspectus of the issues as far as the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') is concerned is a narrow one. For the purpose of development of 50 MW Solar PV Power Project in the State of Madhya Pradesh and another 65 MW Solar PV Power Project in the State of Rajasthan, the Respondent, NTPC Limited, floated tenders through domestic competitive bidding process.

2. With the Petitioner being a successful bidder, the Respondent on 31st March 2016 issued the notification of awards of both the projects in its favour. Pursuant thereto, the parties entered into two contracts on 20th April 2016. As part of the terms of the contracts, the Petitioner was required to furnish to the Respondent indemnity bonds for the full value of the

equipment in each of the projects. The indemnity bond had to be in the proforma set out in the contract. The proforma was silent as to where the indemnity bond should be executed and stamped. Both the indemnity bonds were executed and duly stamped in Delhi. However, when they were tendered to the Respondent, it refused to accept them on the ground that the indemnity bonds were to be executed and registered in the States of Rajasthan and Madhya Pradesh respectively. The grievance of the Petitioner is that as a result of the above dispute, the Respondent withheld payments and also did not allow the Petitioner to claim payments due to it against despatch of modules/equipments.

3. In similar circumstances, in a matter involving the Respondent, NTPC Limited, this Court on 20th October 2016 passed an order in OMP (I) (Comm) No. 409 of 2016 (***Lanco Solar Energy Private Limited v. NTPC Limited***) where it noted the offer of the Petitioner in that case to give an undertaking in this Court by way of an affidavit that if at the stage of seeking enforcement of the indemnity bond, the Respondent NTPC Limited, is called upon to pay any differential stamp duty by the authority before whom it is presented, the liability for such differential duty will be borne by the Petitioner subject to its contesting such determination by the authority, if so permitted in accordance with law.

4. Mr. Gopal Jain, learned Senior counsel appearing for the Petitioner in the present case, makes a similar statement offering to bear the liability for any differential stamp duty that is required to be paid by NTPC Limited at the stage of seeking enforcement of the indemnity bond furnished by the

Petitioner.

5. Mr. Bharat Sangal, learned counsel appearing for the Respondent, NTPC Limited, on the other hand draws attention to an order dated 2nd November 2016 passed by this Court in OMP (I) (Comm) 425 of 2016 (***Vikram Solar Pvt. Ltd. v. National Thermal Power Corporation Limited***) where in addition to the above direction, the Court permitted the NTPC Limited to approach the concerned Stamp Authority under the Rajasthan Stamp Act, 1998 for adjudication of the stamp duty payable with prior notice to the Petitioner.

6. The Court does not see any contradiction between two orders as far as the operative direction is concerned that the Petitioner should furnish an affidavit to indemnify any differential stamp duty that they may be incurred by NTPC Ltd. The Court, however, sees no reason why any specific direction should be issued to NTPC to approach the concerned authority in each of the states for determination of the stamp duty payable on such indemnity bond. As long as the Petitioner is able to indemnify NTPC Ltd. for any liability that might arise in future, NTPC does not have to seek an adjudication on that issue at this stage. That question might arise, if at all, when NTPC seeks to enforce the indemnity bond and the authority before whom it is presented declines to act on it on the ground that it is not duly stamped.

7. The Court takes on record the statement made by learned Senior counsel for the Petitioner and directs that the Respondent will, in respect of both contracts, accept the indemnity bond already furnished by the Petitioner

which has been duly executed and stamped in Delhi in accordance with laws applicable in Delhi. This is subject to the Petitioner furnishing an undertaking by way of an affidavit 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 NTPC Limited impounds the indemnity bond on the ground of it being insufficiently stamped in accordance with law, the Petitioner will undertake to pay the differential duty and penalty as may be determined at that stage by the appropriate authority. It is clarified that this is also subject to the Petitioner contesting such determination by the authority, if so permitted in accordance with law.

8. If the only reason for the Respondent not issuing delivery receipts to the Petitioner for the modules/equipments received at the project sites in terms of the two contracts or withholding payments due in terms thereof, the Respondent will, upon the Petitioner complying with the above directions, release the delivery receipts and also the payments due to the Petitioner on receipt of the equipment at the site.

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

S. MURALIDHAR, J

NOVEMBER 16, 2016

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