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

\+ OMP (I) (COMM.) 440/2016

TEYMA INDIA PVT. LTD. ..... Petitioner

Through: Mr Jayant K. Mehta, Ms Madhavi Khare, Mr Saurabh Dev Karan Singh and Mr Aditya Singhal, Advocates.

versus

JITF WATER INFRASTRUCTURE PVT LTD & ANR. ..... Respondents

Through: Mr Nilava Bandyopadhyay, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **09.11.2016**

IA Nos.13929/2016 & 13930/2016

1. Allowed, subject to all just exceptions.

CAV. 955/2016

2. The learned counsel for the caveator/respondents has entered appearance. The caveat stands discharged.

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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 ad-interim ex-parte injunction against the Respondent No.1 restraining it from invoking the bank guarantee bearing No.BARCBG2015079 for an amount of Rs.3,76,25,000/- issued through Respondent No.2;

(b) Pass an ad-interim ex-parte injunction against the Respondent No.1 restraining it from invoking the bank guarantee bearing No.BARCBG2015078 for an amount of Rs.6,09,88,271.301- issued through Respondent No.2."

4. At the outset, the learned counsel appearing for the respondent No.1 submits that the aforesaid prayers are infructuous since the bank guarantees have already been invoked and respondent no.2 has already issued two demand drafts in discharge of the aforementioned bank guarantees [being bank guarantees nos. BARCBG2015079 & BARCBG2015078 and hereafter mentioned as 'the BGs'].

5. Respondent no. 1 was awarded a contract for engineering, procurement, construction, supplying, laying, testing and commissioning of water supply distribution system for 19 geographic zones (hereafter 'the works') in Dehradun by Uttarakhand Urban Sector Development Investment Programme (hereafter 'the principal employer'). It is stated that the said works were sub-contracted by respondent no. 1 to the petitioner in terms of the agreement dated 19.08.2015. The BG's were furnished by the petitioner in connection with the aforesaid agreement.

6. Mr Mehta, the learned counsel appearing for the petitioner earnestly contended that the invocation of the bank guarantees was fraudulent as there was no dispute that the petitioner had performed the works in question. He handed over a copy of the letter dated 30.06.2016 sent by the respondent No.1 to the principal employer in response to the principal employer's letter dated 18.06.2016 whereby the principal employer had threatened to terminate the contract awarded to respondent no.1. In that letter, respondent no.1 had, *inter alia*, asserted that 92.5% of the work pertaining to the available work front in Section-I (by 11.05.2016) was completed. The thrust

of Mr Mehta's argument essentially is that respondent no.1 is not entitled to take to a contradictory stand with the petitioner. And, since it was respondent No. 1's case with the principal employer that there was no default in execution of the works, it could not invoke the bank guarantees furnished by the petitioner by asserting to the contrary.

7. The learned counsel appearing for respondent No.1 has countered the contentions advanced by Mr Mehta. He has handed over a number of letters, which indicate that respondent no.1 had been repeatedly writing to the petitioner regarding poor performance of its works. By a letter dated 20.07.2016, the respondent no.1 clearly informed the petitioner that it had been issued a notice dated 18.06.2016 to show cause with regard to delay and poor performance of the works.

8. Although, it has been affirmed on behalf of the petitioner that all the relevant documents in possession have been filed, the petitioner has deliberately failed to file these relevant documents, which clearly indicate that there is a serious dispute between respondent No.1 and the petitioner regarding the works.

9. The law relating to interdiction of bank guarantees is now well settled; the same cannot be interdicted unless the party seeking interdiction is able to establish a *prima facie* case of egregious fraud and irretrievable injustice (See: ***Svenska Handelsbanken v. M/s. Indian Charge Chrome and Others*****: (1994) 1 SCC 502** and ***U.P. Cooperative Federation Limited v. Singh Consultants and Engineers Pvt. Ltd.***: **1988 (1) SCC 174**).

10. The present case, at best, merely presents an instance of contractual dispute regarding performance of work and, therefore, the prayers made by the petitioner cannot be allowed.

11. The reliance placed by the petitioner on the letter dated 30.06.2016 sent by respondent no.1 to the principal employer is also not determinative of the dispute between the parties. It is relevant to note that the said response clearly stated that it was "without prejudice". Further, the said response was issued by the respondent no. 1 to dissuade the principal employer from taking action that the principal employer proposed to take against respondent no.1. While respondent no.1 was defending the issue regarding delays and poor work with the principal employer, it also informed the petitioner as to the said controversy, which directly related to the subject contract between respondent no.1 and the petitioner.

12. It is also not in dispute that the principal employer has terminated the contract with respondent no.1, *inter alia*, alleging poor performance.

13. In the circumstances, no interference is called for by this Court. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 09, 2016
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