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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 458/2016

VIKRAM SOLAR PVT. LTD.

..... Petitioner

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

versus

NATIONAL THERMAL POWER COMPANY
LIMITED

..... Respondent

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

CORAM: JUSTICE S.MURALIDHAR

ORDER

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29.11.2016

1. Learned counsel for the Respondent fairly states that the issue involved in the present petition is covered by both the orders dated 20th October, 2016 in OMP (I) (COMM.) 409/2016 (*Lanco Solar Energy Private Limited vs. NTPC Limited*) as well as order dated 16th November, 2016 in OMP (I) (COMM.) 431/2016 (*Tata Power Solar Systems Ltd. v. NTPC Limited*). Additionally, he draws the attention of the Court to the proviso of Section 43 of The Indian Stamp Act, 1899 (ISA).

2. The proviso to Section 43 of the ISA envisages the prosecution of a person who has committed an offence with intention to evade the payment

of proper duty . The court fails to understand how in the context of the present petition the Respondent can be sought to be prosecuted in terms of the above proviso. If at all, it would be the Petitioner who will be answerable thereunder.

3. It appears that the reason for the Respondent to withhold the payment due to the Petitioner on receiving the equipment at the Project site and not handing over the same for installation is that the indemnity bond furnished by the Petitioner in terms of the two contracts dated 20th April 2016 is stamped in Delhi and not under the laws of Madhya Pradesh.

4. Learned counsel for the Petitioner makes the statement that the Petitioner will fully indemnify the Respondent against any claim that might arise against the Respondent as a result of the indemnity bond not being properly stamped and the Respondent being called upon to pay any differential duty and penalty by the appropriate authority before which it is presented.

5. As held by this court in the aforementioned two orders, as long as the Petitioner files an affidavit in the present proceedings to the effect that it undertakes to compensate the Respondent for any liability towards differential duty and penalty as may be determined at that stage by the appropriate authority as a result of the indemnity bond not being stamped in accordance with the laws of Madhya Pradesh, the interest of the Respondent is adequately protected.

6. As already noticed in the said order dated 16th November 2016, the

question of NTPC having to adjudicate on the said issue 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. In that view of the matter, the Court directs that the Respondent will, in respect of both the contracts, accept the indemnity bond already furnished by the petitioner which has been duly executed and duly stamped in Delhi in accordance with laws applicable in Delhi. This is subject to the Petitioner furnishing an affidavit in the present proceedings before this court within a period of one week from today stating that in the event any authority before whom the indemnity bond is sought to be enforced by the NTPC Limited impounds the indemnity bond as not being stamped in accordance with law, the Petitioner will undertake to pay the differential duty and penalty as determined by the appropriate authority. This is subject to the Petitioner being able to contest such determination by the authority, if so permitted in accordance with law.

8. If this was the only reason for the Respondent not releasing the payments due to the Petitioner in terms of the two contracts and not handing over the equipment for installation at the site, the Respondent will, upon the Petitioner complying with the above directions, release the payments due to the Petitioner and the equipments for installation.

9. The petition is disposed of. Order be given *dasti*.

S.MURALIDHAR, J

NOVEMBER 29, 2016/scc
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