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

+ W.P.(C) 8425/2015 & CM No.18012/2015 (for stay)

M/S V.K. SOOD ENGINEERS &
CONTRACTORS P. LTD.

..... Petitioner

Through: Mr. Anil Mittal & Ms. Komal Aggarwal,
Advts.

Versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Pranav Kumar Jha & Mr. Ishan
Jain, Advts.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.01.2016

1. The petition seeks mandamus to the respondent Punjab National Bank (PNB) to reverse the debit entries of Rs.59,04,220/- plus interest thereon in the Overdraft Account of the petitioner with the respondent Bank.
2. Notice of the petition was issued and the counsel for the respondent Bank has appeared.
3. The counsel for the petitioner has argued that the said debits have been made by the respondent Bank towards commission on Bank Guarantees (BGs) and which commission the respondent Bank was not entitled to charge since the BGs have lapsed.
4. It is however informed that the beneficiary under the BGs had invoked the BGs and in FAO (OS) No.407/2011 preferred by the petitioner, vide order dated 26th August, 2011, stay of encashment of the BGs was granted.
5. On further enquiry as to how when there is such stay, it is stated that the BGs have elapsed, it is stated that since there was no direction of the Division Bench of this Court to keep the BGs alive, the BGs lapsed and it is recorded so in the order dated 22nd February, 2012 in the said FAO(OS) No.407/2011 which is informed to be still pending consideration.

6. I have enquired from the counsel for the petitioner whether not in the event of the appeal aforesaid preferred by the petitioner being FAO(OS) No.407/2011 being dismissed, the respondent Bank would be liable to make payment under the BGs.

7. The counsel for the petitioner states that since the BGs have lapsed, no payment would still be required to be made by the respondent Bank.

8. I have put to the counsel for the petitioner whether not in such eventuality, the respondent Bank would be liable to make payment under the BGs which were admittedly invoked and payment whereunder was stayed, on the principles of restitution. Attention of the counsel is also drawn to the dicta of the Supreme Court in *Abhimanyoo Ram Vs. State of UP* (2008) 17 SCC 73 in this context.

9. The counsel for the respondent Bank also adds that this Court does not even have territorial jurisdiction over the matter.

10. The counsel for the petitioner seeks to withdraw the petition with liberty to approach the Division Bench before which FAO (OS) No.407/2011 is pending.

11. At this stage, the counsel for the petitioner states that he is withdrawing the petition not to approach the Division Bench of this Court but to approach the Court of appropriate territorial jurisdiction.

12. Dismissed as withdrawn with liberty aforesaid.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 19, 2016

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