

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

% *Judgment pronounced on: 8th February, 2016*

+ **O.M.P. (I) No.515/2015**

FUTECHT PROJECT (INDIA) PVT. LTD. Petitioner
Through Mr.Manu Seshadri, Adv.

versus

ABOTT HEALTHCARE PVT. LTD. & ANR Respondents
Through Mr.Pranaya Goyal, Adv. with
Mr.Shubham Kulshreshtha, Adv.
for R-1.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking an interim order restraining the respondents from invoking the Bank Guarantees in question.

2. On 11th September, 2015, the following order was passed:-

"I.A. No.19186/2015

Allowed subject to just exceptions.

O.M.P.(I) 515/2015

Issue notice to the respondents by all modes, returnable on 01st October, 2015.

Learned counsel for the petitioner submits that the petitioner installed the fire fighting system in the respondent's factory as back as in December, 2013 and the respondents released all the payments under the two contracts to the petitioner. It is further submitted that the petitioner issued two bank guarantees to the respondent

on 15th October, 2013 with respect to the defect liability period. The bank guarantees are valid up to 13th September, 2015. It is further submitted that there is a dispute with respect to the leakage in the fire fighting pipe lines. According to the petitioner there no defect in the system. It is further submitted that vide letter dated 08th September, 2015, the respondent has invoked both the bank guarantees. It is further submitted that there are special equities in favour of petitioner and therefore, the invocation of bank guarantees be stayed.

In the facts and circumstances of this case, the invocation of bank guarantees number (i) BG No. GOOIBGP132880001 dated 15.10.2013 issued by Karur Vysya Bank for an amount of Rs.16,15,000/- and (ii) BG No. GOOIBGP132880002 dated 15.10.2013 issued by Karur Vysya Bank for an amount of Rs.3,20,000/- are stayed subject to the petitioner keeping the bank guarantees alive. This order is passed at 03.10 P.M.

The competent officers of both the parties shall remain present in the Court on the next date of hearing.

Copy of this order be sent to the respondents along with the notice.

Copy of this order be given *dasti* to counsel for the petitioner under signature of Court Master.

Sd/-
(J.R.Midha)
Judge"

3. After filing the reply, when the matter was taken up, the learned counsel for the respondent No.1 had argued that the present petition is not maintainable for the following reasons:-

- (i) This Court does not have the jurisdiction to try and decide the present petition.

- (ii) The Bank Guarantees in question are unconditional, as the petitioner has failed to set out any irretrievable injustice or special equities or fraud in order to justify an injunction on invocation of the Bank Guarantees. The petitioner has no basis whatsoever to seek an injunction on the said invocation. The interim order passed is liable to be vacated.

4. Learned counsel for the petitioner has not denied the fact that the Bank Guarantees in question are unconditional ones. However, he submits that the respondent No.1 has not suffered any loss due to non-performance. There is no further notice after the completion of the work, thus, the Bank Guarantees cannot be encashed. Counsel has referred to a decision of the Division Bench of this Court in the case of **Jainsons Clothing Corporation v. The State Trading Corporation of India Ltd. and Another**, (1986) 30 DLT 359 (DB), paras 16, 17 & 18. It is pertinent to mention here that the above said judgment has been overruled by the Supreme Court in the case of **The State Trading Corporation of India Ltd. and Another v. Jainsons Clothing Corporation** (1994) 6 SCC 597.

5. As far as the principle with respect to the grant of injunction in unconditional Bank Guarantee's case is concerned, the same has been settled by the Supreme Court number of times, including in the recent judgment passed by the Division Bench of this Court speaking through Hon'ble Sh.Badar Durrez Ahmed and Sh.Sanjeev Sanchdeva, JJ. in the case of **Zillion Infra Projects (P) Ltd. v. Fab-Tech Works & Constructions Pvt. Ltd. and Ors.** 224(2015) DLT 371 where the following decisions of the Supreme Court have been discussed:-

- (i) The Supreme Court in the case of ***U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.***, (1988) 1 SCC 174 has held that in order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of Bank Guarantee, there should be serious dispute and there should be good *prima facie* case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise, the very purpose of Bank Guarantees would be negated and the fabric of trading operation will get jeopardised. The Supreme Court further held that commitments of banks must be honoured free from interference by the Courts. Otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases, that is, to say in cases of fraud and irretrievable injustice that the Court could interfere.
- (ii) In another case of ***U.P. State Sugar Corporation. v. Sumac International Ltd.***, (1997) 1 SCC 568, the Supreme Court has held that when in the course of commercial dealings an unconditional Bank Guarantee is given or accepted, the beneficiary is entitled to realize such a Bank Guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a Bank Guarantee would otherwise be defeated. The Courts should be, therefore, slow in granting an injunction to restrain the realization of such a Bank Guarantee. The

Courts have carved out only two exceptions. A fraud in connection with such a Bank Guarantee, which would vitiate the very foundation of such a Bank Guarantee. Hence, if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional Bank Guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a Bank Guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country.

It was further held that where fraud is alleged it must be a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud to be fraud of a nature that may absolve a bank from honouring its guarantee. The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. However, the evidence must be clear both as to the fact of fraud and as to the bank's knowledge.

6. Applying the above said decisions, it is quite settled that an interim order with regard to the unconditional Bank Guarantee cannot be passed, unless the two other conditions are satisfied by the party who is seeking the injunction against the respondent. With regard to the case of fraud and equity, *ex facie*, there is no material on record to show that the respondent No.1 is not entitled to encash the Bank Guarantees in question which are unconditional in nature and the petitioner is remediless as far as the recovery of the sum in future is concerned. The petitioner, in any case, is entitled to recover or adjust the said sum in the arbitration proceedings when the matter is decided on merits.

7. In the case of ***Abir Infrastructure Pvt. Ltd. v. Teestavalley Power Transmission Limited & Ors.***, 214(2014) DLT 235, in paras 31, 33 and 34, this Court has dealt with the issue of special equity. The said paras are reproduced herein below:-

"31. The same view has been taken by the Supreme Court in the case of ***BSES Ltd (Now Reliance Energy Ltd.) vs. Fenner India Ltd***, (supra) wherein the Supreme Court observed at para 28 and 29 that no such special equities existed on facts as the petitioner in the said case can always has remedy in case it succeeds in the arbitral proceedings and no such case of special equities and irretrievable injustice is made. In the words of the Supreme Court, it was observed thus:

"28. As we have stated repeatedly, the First Respondent can succeed only if the case can be brought under the two accepted exceptions to the general rule against intervention. Evidently, there is no "egregious fraud" so as to fall within the first exception. Hence, only one more point remains: whether encashment of the guarantees will create special equities (in particular, "irretrievable injury") in favour of

the First Respondent? We are not satisfied on facts that such is the present situation.

29. There is no dispute that arbitral proceedings are pending. In fact, we were shown that one of the disputes referred to arbitration is whether the bank guarantees are null and void. Further, one of the substantive prayers in the arbitration made on behalf of the First Respondent, is to make an award declaring the four bank guarantees unenforceable, illegal, void and liable to be discharged. Further, there is also a prayer for permanent injunction to restrain the Appellant from encashing the bank guarantees. Therefore, since this prayer is already pending before the Arbitral Tribunal, we see no situation of "irretrievable injustice" if, at the present moment, the Appellant is allowed to encash the bank guarantees. For justice can always be rendered to the First Respondent, if he succeeds before the Arbitrators. Nor do we see any special equity in favour of the First Respondent, when there is in fact a dispute that performance was prima facie not satisfactory, which enabled the Appellant to encash all or any of the four bank guarantees."

32. x x x x x

33. The reliance of the petitioner of the judgment passed in the case of **Continental Construction Ltd v. Satluj Jal Vidyut Nigam Ltd.**, I (2005) SLT 305 = I (2005) CLT 13 (SC) = 2006(1) Arb LR 321, in order to support the plea of the special equities is completely misplaced. This is due to the reason that the said judgment is distinguishable on facts which can be seen as follows:

(a) In the case of **Continental** (supra), the respondent were intending to frustrate the internal adjudicative mechanism where the said decision was agreed to be final between the parties under the agreement. The liability under the said mechanism was already determined and the respondent was intending to frustrate the same by taking recourse to the encashment of the bank guarantee. No such final

and binding the adjudicatory mechanism exists in the facts of the present case nor the said adjudication has taken place determining the liability and further no attempts to frustrate or over reach the process has been done by the respondent No.1 in the present case. In the instant case, the clause 38 merely provides for mutual consultative process but that does not preclude the parties to raise the dispute or to arbitrate the matter. Thus, the factual position in the case of **Continental** (supra) cannot be compared to the facts of the present case.

(b) In the case of the **Continental** (supra) the claims were awarded by the internal adjudicatory mechanism in favour of the petitioner which have attained finality partially by the appellate forum and the respondent by encashing the bank guarantees were actually nullifying the impact of the said findings which was in the nature of irretrievable injustice of the nature contemplated by the law as the petitioner in the said case despite having award of claims in its favour were faced with the situation of losing out monies which was subject matter of adjudicated claims between the parties and the said case was really case of irretrievable injustice. In the present case, the liability of the respective parties are yet to be determined and the breaches on the part of the petitioner are required to be adjudicated and there is no finding in favour of the petitioner as it was existing in **Continental** (supra), therefore assumption of irreparable injustice when the petitioner and the respondent's version is yet to be examined and determined by drawing corollary from the case where there was finding by the internal adjudicatory process in favour of the petitioner and therefore encashment was done would be improper one. The case of **Continental** (supra) is thus distinct from the present one factually.

(c) In the case of **Continental** (supra), there was a term in the contract under clause 48, the bank guarantees were required to be discharged after the

maintenance period was over and the said plea was upheld by the court under the head of irretrievable injustice. No such circumstances exists which discharge the bank guarantee from the encashment. Thus, on this ground also, no special equities can assumed in favour of the petitioner in the instant case.

In view of the above, the case of the **Continental** (supra) was factually different from the instant case and the reliance of the petitioner on the said case may not aid the case of the petitioner. Thus, this court is not persuaded by any plea of special equities or irretrievable injustice in the manner raised by the petitioner.

34. With regard to the argument of the petitioner about the exception of irretrievable injustice, the argument of Dr. Singhvi is that the irretrievable injustice is not just the adverse effect due to payment of money but must be of an exceptional and irretrievable nature. The injury should override the terms of the guarantee and the adverse effect shall have an impact on the commercial dealings as a whole in the country. [**U.P. State Sugar Corporation v. Sumac International Ltd.** (supra)].

Thus, the irretrievable injustice cannot be mere burdensome loss caused to the Petitioner. An injunction can be granted only when the injury is of the kind in **Itek Corpn.** Case (566 Fed. Suppl. 1210) where the aggrieved party is left remediless [**U.P. State Sugar Corporation v. Sumac International Ltd.** (supra)]. The irretrievable injustice should be of serious nature that the party is not able to reimburse itself and is not able to reclaim its loss [**U.P. Coop. Federation Limited v. Singh Consultants and Engineers (P) Limited**, (supra); **Dwarikesh Sugar Industries v. Prem Heavy Engineering Works (P) Ltd.**, (1997) 6 SCC 450].

8. Applying the said proposition of law to the facts of the present case, there is no such case of the special equities made out by the petitioner which leaves the petitioner as remediless to recover the

said amount. The plea of the petitioner is disputed one which is required to be examined and adjudicated by the Arbitral Tribunal.

9. Thus, it is clear that no case on merit for continuation of the interim order is made out by the petitioner. The petitioner, however, is entitled to raise the issue during the arbitration proceedings and would also be entitled to adjust the said amount if the Award is passed in favour of the petitioner.

10. Even otherwise, this Court does not have the jurisdiction to hear and decide the present petition, if the clauses of the Bank Guarantees in question are read in a meaningful manner. Clause 12 of each of the Bank Guarantees, which are the subject matter of the present petition, confer exclusive jurisdiction upon the Courts in "Mumbai Urban District" in respect of any matter arising out of the Bank Guarantees and specifically exclude the jurisdiction of all other Courts. Moreover, Clause 18 of the Purchase Order dated 8th February, 2013, which is the underlying contract between the petitioner and respondent No.1, also confers exclusive jurisdiction on the Courts of Mumbai to adjudicate upon all matters, claims and disputes in respect of the Purchase Order and all transactions arising therefrom.

11. The law on the issue of territorial jurisdiction is quite settled. If the Court has no jurisdiction to entertain the present petition, the petitioner cannot obtain the relief otherwise. The said objection raised by the respondent No.1 has been discussed time and again. Reliance is placed on the following judgments:-

- (i) ***Balaji Coke Industry Pvt. Ltd. v. Maa Bhagwati Coke Gujarat Pvt. Ltd.***, (2009) 9 SCC 403, paras 24 to 30 reads as under:-

"24. The only question which falls for our consideration is whether, notwithstanding the mutual agreement to make the high-seas sale agreement subject to Kolkata jurisdiction, it would be open to the respondent Company to contend that since a part of the cause of action purportedly arose within the jurisdiction of the Bhavnagar Court, the application filed under Section 9 of the Arbitration and Conciliation Act, 1996, before the Principal Civil Judge (Senior Division), Bhavnagar (Gujarat), would still be maintainable.

25. The aforesaid question has often troubled the courts with one view being that since the parties to the agreement had agreed to a particular forum, they could no longer resile from the said position and claim that other courts, where a part of the cause of action may have arisen, would also have jurisdiction to entertain a suit or other proceeding. The other view has been that, if by the said agreement the rightful jurisdiction of a court was sought to be ousted and a court was vested with the jurisdiction to entertain a suit, which it did not have, the same would be contrary to the provisions of Section 28 of the Contract Act, 1872, being contrary to public policy. One of the earlier judgments on this dichotomy of views is that of this Court in *Hakam Singh* [(1971) 1 SCC 286 : AIR 1971 SC 740].

26. Faced with the question as to whether an agreement arrived at between two parties that one of the two courts having jurisdiction, would decide all the disputes relating to such agreement, was hit by the provisions of Section 28 of the Contract Act, 1872, this Court in *Hakam Singh* case held that where two courts or more have the

jurisdiction to try a suit or proceeding under the provisions of the Code of Civil Procedure, an agreement between the parties that one of such courts would have the jurisdiction to decide the disputes arising between the parties from such agreement would not be contrary to public policy and would not, therefore, be contrary to the provisions of Section 28 of the Contract Act, 1872.

27. The said question once again arose in *A.B.C. Laminart (P) Ltd.* [(1989) 2 SCC 163], wherein following the decision in *Hakam Singh*, but relying on the maxim *ex dolo malo non oritur actio*, this Court held that by an agreement which absolutely ousted the jurisdiction of a court having the jurisdiction to decide the matter, would be unlawful and void, being contrary to public policy under Section 28 of the Contract Act. But so long as the parties to a contract do not oust the jurisdiction of all the courts, which would otherwise have the jurisdiction to decide the cause of action under the law, it could not be said that the parties had by their contract ousted the jurisdiction of the court.

28. This Court in *A.B.C. Laminart case* went on to observe that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewithin, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise between them, the agreement would be valid.

29. The question also arose in *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.* [(1993) 2 SCC 130], where an endorsement "subject to Anand (Gujarat) jurisdiction", was relied upon to contend that only the courts in Anand would have the jurisdiction to entertain any dispute relating to such jurisdiction and the suit filed in Bombay on the ground that the cause of

action arose in Bombay was not maintainable. In the said case, this Court held that since apart from the endorsement on the deposit receipt, there was no formal agreement between the parties, the said endorsement would not divest the courts in Bombay of their jurisdiction to entertain the suit. As will be evident from the facts of the suit, the same stood on a different footing and does not advance the case of the respondent in any way.

30. In the instant case, the parties had knowingly and voluntarily agreed that the contract arising out of the high-seas sale agreement would be subject to Kolkata jurisdiction and even if the courts in Gujarat also had the jurisdiction to entertain any action arising out of the agreement, it has to be held that the agreement to have the disputes decided in Kolkata by an arbitrator in Kolkata, West Bengal, was valid and the respondent Company had wrongly chosen to file its application under Section 9 of the Arbitration and Conciliation Act before the Bhavnagar Court (Gujarat) in violation of such agreement. The decisions of this Court in *A.B.C. Laminart (P) Ltd.* as also *Hakam Singh* are very clear on the point."

(ii) ***Swastik Gases Private Limited v. Indian Oil Corporation Limited***, (2013) 9 SCC 32, paras 7, 28 and 57 read as under:-

"7. We have heard Mr Uday Gupta, learned counsel for the appellant and Mr Sidharth Luthra, learned Additional Solicitor General for the Company. The learned Additional Solicitor General and the learned counsel for the appellant have cited many decisions of this Court in support of their respective arguments. Before we refer to these decisions, it is apposite that we refer to the two clauses of the agreement which deal with arbitration and jurisdiction. Clause 17 of the

agreement is an arbitration clause which reads as under:

17. Arbitration

If any dispute or difference(s) of any kind whatsoever shall arise between the parties hereto in connection with or arising out of this agreement, the parties hereto shall in good faith negotiate with a view to arriving at an amicable resolution and settlement. In the event no settlement is reached within a period of 30 days from the date of arising of the dispute(s)/difference(s), such dispute(s)/difference(s) shall be referred to 2 (two) arbitrators, appointed one each by the parties and the arbitrators, so appointed shall be entitled to appoint a third arbitrator who shall act as a presiding arbitrator and the proceedings thereof shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof in force. The existence of any dispute(s)/difference(s) or initiation/continuation of arbitration proceedings shall not permit the parties to postpone or delay the performance of or to abstain from performing their obligations pursuant to this agreement.

X X X X X

28. Section 11(12)(b) of the 1996 Act provides that where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an arbitration other than the international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate, and where the High Court itself is the court referred to in clause (e) of sub-section (1) of Section 2, to the Chief Justice of that High Court. Clause (e) of sub-section (1) of

Section 2 defines "court" which means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes.

x x x x x

Conclusion

57. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the courts in Kolkata had jurisdiction to entertain the disputes between the parties."

(iii) ***Jyothi Turbopower Services Pvt. Ltd., Biswajit Nath, J Nath v. Shenzhen Shandong Nuclear Power Construction Company Ltd., Deputy Project Manager, Liu Yan Zheng and Syndicate Bank, Branch Manager***, (2011) 3 Arb. LR 442 (AP), paras 17, 18, 30 and 31 reads as under:-

"17. Having regard to the contentions of the respective counsel, the points that arise for consideration in the present appeal are:

- 1) Whether the Court below has jurisdiction to entertain the present application filed by the

appellant under Section 9 of the Act, for an interim measure, when the parties have designated the State of Orissa, as the place of arbitration?

2) Whether the Court below is justified in going into the merits of the matter and giving a finding that there is no prima facie case in favour the appellant, having held that it has no jurisdiction to entertain the present petition?

18. The learned counsel for the appellant submits that even a fraction of cause of action is enough and sufficient to decide the territorial jurisdiction of a Court for entertaining the petition under Section 9 of the Act. According to him, the registered office of the appellant company is situated at Hyderabad, the tender documents under Ex.A11 have been submitted from Hyderabad, agreement works are being monitored from Hyderabad and the bank guarantees have been drawn at the banks at Hyderabad, and thus cause of action having arisen within the jurisdiction of the Court below, in view of the provisions of Section 20 C.P.C., the Court below had the jurisdiction to entertain application under Section 9 of the Act. In support of this contention, he relied upon the decision of a Division Bench of this Court in *INCOMM Tele Ltd. v. Bharat Sanchar Nigam Ltd* (1 supra).

x x x x x

30. Though the learned counsel for the appellant contended that decisions of this Court in *Salarjung Museum* case and *Paramita Constructions* case, cannot be made applicable to the facts of the case on hand because the former dealt with an application filed under Section 34 of the Act, for setting aside the award passed by the Arbitrator, and the latter dealt with an application filed under Section 11 of the Act for appointment of Arbitrator, and not an application under Section 9 of the Act, but the fact remains, in the said two decisions, the Courts, though not directly, but

incidentally, while considering the provisions of the law, held that when the parties have chosen a particular State/City, as the place of arbitration, the "Court" appearing in Sections 9 and 34 shall be the Courts situated in the said State/City alone, and not any other.

31. In the case on hand, as noted supra, the parties have specifically, in Article 10 of the agreement, have agreed to the place of arbitration as the State of Orissa. That being so, we are of the considered opinion that the appellant cannot be permitted to invoke the theory of cause of action by application of the provisions of the Code of Civil Procedure, so as to confer jurisdiction upon the Court at Hyderabad, for entertaining application under Section 9 of the Act, and if such argument of the appellant is accepted, then the very purpose of the parties agreeing to the place of arbitration as State of Orissa in Article 10 of the agreement, would be defeated."

(iv) ***DLF Industries Ltd. v. ABN Amro Bank and Ors.,***

2000(55) DRJ 470, para 19, which reads as under:-

"19. It is a fundamental principle well established and as held in *Karon Singh and Others v. Chaman Paswan and Others*, (1955) 1 SCR 117 that a decree passed by a Court without jurisdiction is a nullity. Its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. It was further held that a defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree and as such a defect cannot be cured even by consent of parties. We may also refer to a few decision of High Courts that in such circumstances it will not be permissible to extend the order of injunction even for a moment, while ordering return of petitions with liberty to the

petitioner to file, the same in appropriate Court of competent jurisdiction, after this Court has come to the conclusion that the petitions are not entertainable. The decisions are *In Re Chunduru Venkata Subrahmanvam*, AIR 1955 AP 74; *Raunaq Int. Ltd. v. Mini Sea Foods*, 1983 RLR 202; *R. Venkataswami Naidu v. M/s. South India Viscose Ltd., Coimbatore*, AIR 1985 Madras 257 And *M/s. Subbhash Chander Kamlesh Kumar v. State Of Punjab And Others*, AIR 1990 P&H 259."

12. In view of the above settled law and as per above mentioned clause of the Bank Guarantees and the agreement between the parties, I am of the clear view that this Court has no territorial jurisdiction to entertain the present petition. The same is accordingly dismissed. The interim order already granted by order dated 11th September, 2015 is vacated.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 08, 2016