IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 28TH DAY OF APRIL 2017

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

O.A.No.354 of 2017
in
C.S. No.257 of 2017

ETA Engineering Private Limited,
New No.71, Old No.63, Sterling High Road,
Nungambakkam,
Chennai 34
represented by its Company Secretary
Ms.Kalpana Gupta ..Applicant/Plaintiff

-vs-

The Jammu and Kashmir Bank Ltd.,
Voltas International Centre,
52, Armenian Street,
Parrys, Chennai 600001. ..Respondent/Defendant

Original Application praying that this Hon'ble Court be pleased to grant an order of Interim Injunction directing the Respondent to extend the tenure of the bank guarantees mentioned in Schedule A & B till the demand for payment is made by the beneficiaries pending diposal of the suit.

This Original Application coming on this day before this court for hearing the court made the following order:

This application is filed for interim mandatory injunction, directing the respondent to extend the tenure of the bank guarantees mentioned in Schedule A & B till the demand for payment is made by the beneficiaries, pending disposal of the suit.

2. The case of the applicant is that it is a Company incorporated under the Companies Act and is engaged in execution of EPC Contract. It had availed cash credit facility, bank guarantee / letter of credit facility, buyers credit and forward contract from the respondents. Originally, the respondent has sanctioned a total limit of Rs.25 Crores [Rupees Twenty Five Crores only] as non fund based credit facility and subsequently, it was enhanced to Rs.221 Crores [Rupees Two Hundred and Twenty One Crores only]. All the facilities were guaranteed by equitable mortgage of several items of immovable properties owned by the applicant in various places and the facility was extended and it was enhanced to Rs.276 Crores [Rupees Two Hundred and Seventy Six Crores only] on 06.10.2015.

3. The applicant would further allege that the applicant is implementing various infrastructure projects for the Government and other private employers through the country. Such engineering contracts are covered by the bank guarantee. The respondent has issued bank guarantee to various Government and other organizations. The tenure of bank guarantee is varying from time to

time, depending upon the nature of contract and it has been extended before expiry of period stipulated under the bank guarantee. The applicant would further state that due to the reasons beyond the control of the applicant, there was delay in repayment of the money utilized under cash credit facility sanctioned by the respondent, so the account become NPA. When the applicant was discussing with the respondent for restructuring the cash credit facility, some of the guarantees become due for extension. The request of the applicant to extend the bank guarantees was not considered and they permitted the beneficiaries to encash the bank guarantee. Hence, the suit.

4. The respondent has filed a counter affidavit stating that the account of the applicant has become NPA, so, as per the guidelines of the Reserve Bank of India, they cannot renew the bank guarantee. It is further stated that unconditional bank guarantees were issued to the beneficiaries and even if there is any dispute between the applicant and the beneficiaries, the respondent cannot withhold the amount. It is further stated that it is the prerogative of the Bank to extend its tenure and the applicant cannot seek extension as a matter of right.

5. Mr.C.Manohar Gupta, learned counsel for the

applicant while reiterating the averments made in the affidavit would submit that the beneficiaries of the bank guarantee only approaches the respondent-Bank for extension, but instead of extending the bank guarantee, they make the payment without any demand or invocation of bank guarantee. The learned counsel would further submit that there was default in repaying the loan amount availed under cash credit facility, for which, the respondent had already issued a notice under the SARFAESI Act and it is now under negotiation.

6. The learned counsel would further submit that the applicant is aware that the bank guarantees are unconditional, but their only grievance is that when the beneficiaries approaches the respondent for extension, that can be done in the interest of the applicant as well as the respondent. It is contended by the learned counsel for the applicant that when the contract is under execution, if the respondent bank makes payment, the applicant will not be in a position to recover the amount and on the other hand, the liability of the applicant in the respondent would be increasing, resulting inability of the applicant to repay the loan amount to the respondent.

7. Mr.V.V.Sivakumar, learned counsel for the respondent vehemently opposed the request of the

applicant contending that the respondent Bank is under obligation to make the payment when the beneficiaries approaches the respondent and that if an order is granted, it would affect the beneficiaries, but they are not made as parties to this suit. Hence, the suit itself liable to be dismissed for non-joinder of necessary parties. In support of his contentions, the learned counsel has relied upon the following judgments:-

(i) AIR 2007 SUPREME COURT 2798 [Himadri Chemicals Industries Ltd. V. Coal Tar Refining Company]

(ii) (2008) I SCC 544 [VINITEC ELECTRONICS PRIVATE LTD. V. HCL INFOSYSTEMS LTD.]

(iii) (1998) 1 SCC 174 [U.P.C.F. LTD. V. SINGH CONSULTANTS AND ENGINEERS (P) LTD.]

8. In reply, the learned counsel for the applicant would submit that this application is not filed seeking injunction restraining th respondent-Bank from encashing the bank guarantee. So, the beneficiaries are not necessary parties to the suit.

9. In my considered opinion, the judgments relied upon by the learned counsel for the respondent have no application to the facts of this case for the reasons that this application is not filed for injuncting the respondent from making payments in unconditional bank

guarantee when the beneficiaries invokes the same. It is the specific case of the applicant that if the beneficiaries approaches the respondent for extension, that can be considered and if the beneficiaries invoke the bank guarantee that amount can be paid to them. Even though, the respondent opposed the application stating that the respondent cannot renew the bank guarantee once the accounts of the applicant becomes NPA, but no documents have been produced to substantiate the said contention.

10. I find force in the submission of the learned counsel for the applicant. Considering the facts of this case, I am of the opinion, the application deserves to be allowed. Accordingly, this application is allowed.

sd/.M.K.K.S.J

28.04.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/09.05.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.