

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 18th DAY OF DECEMBER 2017

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. No.7438 of 2017

In the matter of Arbitration
between Industrial Laminates
India Pvt. Ltd., and Southern
Railway in respect of disputes
under Purchase Order dated
07.03.2016 bearing No.04/15/
0706/1/05363.

M/s.Industrial Laminates India Pvt. Ltd.,
Survey No.13, Village Aghai,
Taluka Shanpur, District Thane,
Maharashtra-421 301.

... Applicant

-Versus-

1. The General Manager,
Southern Railways,
Ayanavaram, Chennai-600 023.

2. The Office of the Principal
Chief Material Manager (CMM),
(Formerly the Office of the
Controller of Stores),
Southern Railways,
Ayanavaram, Chennai-600 023.

3. M/s.Saraswat Co-operative Bank Ltd.,
Mittal Court, A-wing,
Nariman Point, Mumbai-400 021.

... Respondents

Application praying that this Hon'ble Court be pleased
to pass an order of interim order by directing the second
respondent to refund the encashed Bank Guarantee
No.BG/4/1214 dated 28.07.2017 for a sum of Rs.9,57,500/- to
the applicant pending disposal of the arbitration
proceedings.

This application coming on this day before this court for hearing the court made the following order:-

This application seeks refund of bank guarantee of a sum of Rs.9,57,500/- that has been encashed by R1 on 28.07.2017.

2. Heard Ms.S. Rajeni Ramadass appearing for the applicant and Mr.P.T.Ramkumar appearing for R1. R2, the Saraswat Co-operative Bank is unrepresented.

3. The applicant had entered into a contract with the Railways, R1 and R2, for the supply of brake blocks pursuant to which a Purchase Order (PO) was executed on 07.03.2016 for supply of 33,418 numbers of brake blocks for a total consideration of Rs.95,74,257/-. In accordance with the terms of the PO, the applicant furnished a security deposit of Rs.9,57,500/- vide bank guarantee dated 11.02.2016 issued by R3 bank, valid till 10.02.2017.

4. Admittedly, 10684 brake blocks were initially supplied and a request was made for re-fixation of delivery date for the balance quantity on account of various contingencies said to be faced by the applicant. The Railways was agreeable to the re-fixing of the delivery period subject to the applicant reducing the rate per brake

block from Rs.286.5 to Rs.205.85. While the negotiations were on, 2915 brake blocks were supplied. The negotiations continued and the balance of the brake blocks have admittedly not been supplied till date. It is the case of the applicant that it has invoked the arbitration clause on 30.10.2017. While so, the Railways has encashed the bank guarantee.

5. No counter has been filed by the Railways. Prima facie I am of the view that no case has been made out by the applicant for repayment/refund of the bank guarantee already encashed. Admittedly, the bank guarantee has been encashed pursuant to default by the applicant in effecting supply as per the terms of the PO. It is settled position that the invocation of a bank guarantee can be interfered with only in the face of egregious fraud, irreparable hardship to the party or if the invocation thereof is contrary to the terms of the agreement between the parties. As of the present, the present case is not shown to fall within any of the aforesaid situations.

6. The Railways is directed to act upon the request for arbitration by the applicant dated 30.10.2017 and appoint an arbitrator in accordance with law within a period of four (4) weeks from date of receipt of this order. Liberty is granted to the applicant to seek such

interim relief as may be required before the Tribunal at the appropriate juncture, in accordance with law. Such a prayer, if made, shall be considered and disposed of by the tribunal in accordance with law.

7. The application is closed in the above terms.

Sd/.DR.A.S.M.J

18.12.2017

//Certified to be a true copy//

Dated this the day of 2018.

COURT OFFICER

jj 10/04/18

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