THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.30793 of 2017

ORDER:

Heard the learned Counsel for the petitioner and the learned Standing Counsel for respondent Nos.1 and 2.

The petitioner is a proprietary concern engaged in the business of supply of grinding media balls for coal and it is supplying to various Government/Semi-Government Departments/Units for the last several years. While so, it entered into an agreement with the first respondent for supply of the said material. At the time of entering into the agreement it provided a permanent security deposit through a bank guarantee and performance bank guarantee as follows:

> "1. Bank Guarantee bearing No. 010594BG0000205/11-12, dt.30.01.2012 of Rs.20,00,000/-.
>
> 2. Bank Guarantee bearing No. 0159406BG0000117/06-07, dt.17.11.2006 of Rs.10,00,000/-."

The said permanent security deposit and performance bank guarantee have been extended from time to time and they are in force as on today. The petitioner executed several works for the benefit of the first respondent and it became successful tenderer pursuant to the tender notice. After purchase order dated 18.11.2014, the second respondent issued another purchase order on 22.08.2015 for supply of 392.5 MT of High Chrome Grinding Media required for Dr.NTTPS & RTPP. The second respondent found defect in the material supplied by the petitioner. The petitioner requested the Chief Engineer of Dr.NTTPS to grant permission to segregate the material at petitioner's cost at the office of the second respondent, but the second respondent refused to grant permission for the same. The petitioner took back the material on 03.03.2016 and sent good quality material under two trucks to the second respondent on 05.03.2016. However, the Vigilance Wing of Dr.NTTPS lodged a complaint against the representatives of the petitioner firm on 08.03.2016 and the said complaint was registered as FIR No.75 of 2016 on the file of Ibrahimpatnam Police Station, Vijayawada City, for the offence punishable under Section 420 IPC, and the same is pending. While so, the second respondent issued a show cause notice on 31.10.2016 requesting the petitioner to offer explanation within fifteen days. The petitioner submitted reply on 07.11.2016 seeking time of four to six weeks to respond to the queries raised by the second respondent. But, the second respondent issued a notice on 20.12.2016 proposing to terminate the contract and consequential encashments of bank guarantees. The petitioner submitted explanation to the same on 13.01.2017. When the second respondent addressed a letter to the third respondent for encashment of bank guarantees furnished towards security and performance, the present Writ Petition is filed.

Learned Counsel for the petitioner submits that no loss was caused to respondent Nos.1 and 2 and invocation of bank guarantee is not warranted in the facts and circumstances of the case. He further submits that respondent Nos.1 and 2 had not lodged any claim against the petitioner in order to invoke the bank guarantee furnished by the petitioner.

This Court perused the letter of extension of bank guarantee and it clearly states that it is unconditional and absolute. It also agrees to fulfill the claims without any delay or demur. It also guarantees the losses, claims, damages and costs suffered by respondent Nos.1 and 2. In view of the nature of the guarantee which is a separate contract between the third respondent and respondent Nos.1 and 2, the third respondent is under obligation to honour the demand made by respondent Nos.1 and 2. It is not a case where fraud is alleged or irretrievable harm is caused to the petitioner. This Court had an occasion to elaborately consider the issue with regard to the encashment of bank guarantees in **M/s.Lanco Infratech Limited v. Power Finance Corporation, New Delhi** (Writ Petition No.24437 of 2017 dated 07.08.2017) and, based on the judgments of the Supreme Court, held that except in those two circumstances, this Court cannot interfere in bank guarantee matters in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The present case is not a case for exercising the said jurisdiction.

The Writ Petition is, accordingly, dismissed at the stage of admission. The miscellaneous petitions pending in this Writ

Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

12.09.2017

<u>Note</u>: Issue C.C in two days.
B/o.
vs