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

% Judgement delivered on: 25th April, 2017

+ **FAO(OS) (COMM) 61/2017**

M/S MULTITEX FILTRATION ENGINEERS LTD

..... Appellant

Through Mr.Arun Kumar Varma, Sr. Adv.
with Mr.Abhay Raj Varma,
Mr.Ashish Joshi, Ms.Priyanka Ghosh,
Mr.Himanshu and Mr.Nikhil Arya,
Advs.

versus

M/S FERNAS CONSTRUCTION COMPNAY INC & ORS

..... Respondent

Through Mr.Krishna Chandra Dubey, Adv.
with Mr.Bharat Saini, Adv. for R-1
Mr.Sandeep Mahapatra and
Mr.Ashish Mukhi, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

The appellant's (Multitex Filtration Engineers Ltd.) grievance is that despite an interim order restraining the encashment of the bank guarantee (which was reduced in value to US Dollar 145,000.00), the third respondent - Turkiye Garanti Bankasi, Turkey, which had issued a counter guarantee, claimed to have paid out the amount of USD 290,000.00. This statement became the basis of the impugned order, which held that the interim order and consequently the Section 9 application under the Arbitration and Conciliation Act, 1996 was

rendered infructuous. During the pendency of these proceedings the Court had restrained encashment of the bank guarantee to the tune of USD 145,000.00 by the second respondent - Bank of India. In the subsequent proceedings the Court had not passed any order since it was represented that the appellant and the first respondent – Fernas Construction Company Inc., were in negotiations. Today the Court was informed that out of the balance USD 145,000.00, the first respondent can – in terms of agreement/minutes of meeting dated 19th April, 2017 – retain USD 70,000.00 and the balance USD 75,000.00 would be returned to the appellant and new bank guarantee of USD 30,000.00 would be provided by the appellant to the first respondent. The minutes of meeting relied upon by the party are extracted below:

Minutes of meeting

A meeting was held on April 19, 2017 between representatives of Fernas Construction Company Inc. Turkey (FCCI, the Contractor of GTCL) and Multitex Filtration Engineers Ltd. India (Multitex, the Specialist Subcontractor of FCCI) at GTCL Head Office Bhaban, Dhaka, Bangladesh in presence of representatives of GTCL (the Employer). List on attendees is enclosed at Annexure-1. After detailed discussion, the minutes of meeting are as follows:

<i>SL. No.</i>	<i>Decision</i>
<i>01.</i>	<i>BG No.6041FPEBG150034 was issued by Multitex to FCCI for total face value of USD 290,000.00 (US Dollars two hundred ninety thousand). FCCI has issued BG reduction letters addressed to Multitex's Bank of total value USD 145,000.00 (USD 72500+USD 72500) against supply of Ball valves and spare parts (SL No.2 & 4) as per MoM between Multitex and FCCI dated 27th May, 2016 (Annexure-2). In view of above the face value of the BG stand reduced to USD 145,000.00 instead of USD 290,000.00 and FCCI will send an instruction letter addressed to Multitex's Bank as well as to Turkey counter Bank.</i>

02.	<i>Multitex confirmed that their Bank of India has already transferred USD 145,000.00 to FCCI Bank as per the Court order. Transfer details will be provided by Multitex to FCCI.</i>
03.	<i>On receipt of above details FCCI agreed the followings:</i> <i>a. FCCI will retain USD 70,000.00 (US Dollar Seventy thousand) in lieu of various claims for the cost spent by them at site and on procurement of flow computer directly.</i> <i>b. Balance amount of USD 75,000.00 (US Dollar Seventy five thousand) will be returned to Multitex as</i> <i>- USD 45,000.00 (US Dollar Forty five thousand) to be retained by Multitex and new Bank Guarantee of USD 30,000.00 (US Dollar Thirty thousand) to be provided by Multitex to FCCI valid for discharge on completion of commissioning support for all the three metering/RMS stations at Bakhraabad, Haripur and Siddhirganj. Multitex will also provide all the relevant technical document wherever necessary. It has been discussed jointly that commissioning of RMS packages shall be completed within one months after site is ready for commissioning.</i> <i>c. FCCI confirms that they will make site available and also provide air ticket, transportation, fooding and accommodation for Multitex representative (s).</i> <i>d. Request for commissioning support will be sent by FCCI two weeks in advance. Multitex confirms that they will organise accordingly and will provide three nos. visits only.</i> <i>e. FCCI has to provide Bank instruction under serial no.1 and the payment under serial no.3.b as above and on completion of the same Multitex shall provide commissioning support.</i>
04.	<i>FCCI and Multitex shall have no other financial claim in future.</i>
05.	<i>Joint application will be made for withdrawal of all Court cases base on above agreement.</i>

In view of the above development it is directed that the first

respondent shall be entitled to USD 70,000.00 and that the balance USD 75,000.00 shall be returned to the appellant. The appellant shall in turn ensure that the bank guarantee, in accordance with agreed terms, be furnished to the first respondent/FCCI within three weeks. This is subject to payment of USD 75,000.00. The existing bank guarantee No.6041FPEBG150034 shall be discharged in terms of the minutes of meeting.

It is clarified at the same time that the rights and contentions as well as legal remedies available to the third respondent bank - Turkiye Garanti Bankasi, Turkey are in no way affected nor is any ruling upon its entitlements made in these proceedings or deemed to have been made. The said third respondents' rights are not affected in any manner with respect to first respondent – Fernas Construction Company Inc. and second respondent - Bank of India.

The appeal is disposed of in above terms.

Dasti under signature of the Court Master.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 25, 2017
VLD