$~A-45

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

\+ C.R.P. 70/2017

UNITY INFRAPROJECTS LIMITED ..... Petitioner
Through Mr.Jawahar Raja and Mr.Ashish Sharma Advocates with Mr.Mrinal Kaushik, AR

versus

NEPTUNE SYSTEMS PRIVATE LIMITED AND ORS ..... Respondents
Through Mr.Sudhir Nandrajog, Sr. Advocate with Mr.Ankur Singhal, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% **30.03.2017**

<u>C.R.P. 70/2017 & CM Nos.11273-11274/2017</u>

1. By the present revision petition filed under section 115 of the CPC the petitioner seeks to impugn the order dated 21.02.2017 by which order the executing court had directed the Garnishee Engineers India Limited (EIL) to release the amount of Rs.81,97,448/- after invoking the bank guarantee.

2. The respondent filed a suit under Order 37 CPC for recovery of the said amount of Rs.81,97,448/-. The application for leave to defend filed by the petitioner was dismissed holding that no triable issue has been raised. The suit was accordingly decreed. The petitioner has filed an appeal against the said decree which stands admitted. However, no stay order has been passed by the appellate court.

3. In the present Execution Petition the respondents have sought to attach the amount payable by the Garnishee EIL to the petitioners. On 26.11.2016 the Executing Court noted that the Statement of Account has been filed by the Garnishee EIL. The Executing Court went into the Statement of Accounts filed by the Garnishee and directed attachment on the maturity of the bank guarantee from the amount lying in the project head with the Garnishee. The Garnishee EIL was directed not to release the amount equal to the decretal amount and for the rest of the amount it was at liberty to release the same to the concerned parties. On 21.2.2017 an application filed by the petitioner for recalling of the order dated 26.11.2016 was dismissed by the Executing Court directing release of the amount of Rs.81,97,448/- after invoking of the bank guarantee.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that as per the Statement of Accounts filed by EIL no amount is due or payable to the petitioner and in fact on account of liquidated damages which are sought to be imposed by the said EIL the petitioner has to pay the said company. He submits that the directions passed by the Executing Court to invoke the bank guarantee given by the petitioner to EIL in connection with the project assigned to the petitioner was illegal and contrary to the legal position. It was put to learned counsel for the petitioner that the petitioner is trying to defeat the decree on technical grounds. Learned counsel, however, submits that there is no dispute that the petitioner is liable to pay to the respondents the decretal amount. He, however, submits that the petitioner is unable to deposit any amount on account of Corporate Debt Restructuring Mechanism which is being done as per RBI guidelines by the corporate creditors.

6. Learned senior counsel appearing for respondent No.1 submits that firstly the bank guarantee in question has already been invoked and that the amount already stands deposited with the executing court. He further submits that the petitioner cannot be permitted to wriggle out of his liability and render the decree in favour of the respondent No.1 infructuous, in this manner. He further stresses that the appellate court has also declined to grant any interim orders in favour of the petitioner and the petitioner is only using dilatory tactics to delay making of payment.

7. I may first see the Statement of Accounts filed by EIL, the garnishee. As per the Statement of Accounts it is confirmed that the final bill of the amount of Rs.4.94 crore has been submitted by the petitioner and a sum of Rs.4.50 crore is tentatively payable. The said EIL is seeking to impose LD (liquidated damages) on the petitioner and hence, it seeks to encash the bank guarantee to reconcile the amount of Rs.1.36 crores allegedly payable by the petitioner.

8. The petitioners in their application which was filed for recall of the order dated 16.9.2016 have also elaborated the accounts position. They admit that a final bill of Rs.4.6 crores has been submitted to the EIL. Rs.2.4 crores is payable by the said EIL to sub-contractors/suppliers/vendors directly. Hence, a balance of Rs.2.2 crores remains payable to the petitioner. What is contended by the petitioner is that this amount of Rs.2.2 crores payable by EIL would get wiped out on account of a claim of EIL for liquidated damages.

9. It is clear that certain amounts are payable by the EIL to the petitioner. However, EIL seeks to deny its liability to pay any amount to the petitioner as it seeks to impose liquidated damages on the petitioner, which

damages would mean that the petitioner becomes the debtor of EIL for which EIL seeks to encash the bank guarantee. It is for the EIL to adjust its accounts in any manner it may deem proper. As per the stand of EIL, it has to invoke the bank guarantee given by the petitioner. In fact as of today, the guarantee already stands invoked. Hence irrespective of the order of the Court EIL was invoking the Bank Guarantee.

10. In light of the above, it is clear that the attempt of the petitioner is only to delay and defeat the execution of a decree which cannot be permitted. The petitioner cannot be permitted to seek equity from this court by raising technical arguments. There is no merit in the present petition. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

MARCH 30, 2017
n
..