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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 581/2014 & C.M.No.10675/2016

FRIENDS & FRIENDS SHIPPING (P) LTD. Petitioner

Through Mr.B.S.Iyengar with Mr.Shailesh
Madiyal, Advocates.

versus

B.B. PATTANAIK & ORS. Respondents

Through Mr.K.K.Tyagi with Mr.Iftikhar
Ahmad, Advocates for R-1, 3 & 4.
Mr.Sartaj Singh, Advocate for PNB.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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28.04.2017

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 30th April, 2014, whereby a Coordinate Bench of this Court in OMP No.993/2013 allowed the respondents to encash the bank guarantees to the extent of fixed and variable charges and other dues payable for the period from December 2013 to April 2014. The Court further directed the bank guarantees for the remaining amount, if any, to be kept alive till the disposal of the arbitral proceedings.

2. Learned counsel for the petitioner states that it was the respondents' own case in OMP No.993.2013 that Rs.4,66,54,961/- is outstanding. Consequently, according to him, the respondents by

encashing the bank guarantees totalling to Rs.6,17,17,908/- have violated the order dated 30th April, 2014.

3. Per contra, it is the case of the respondents that on the date, bank guarantees were encashed, the outstanding amount was Rs.6,17,17,905/-. In support of his contention, learned counsel for the respondents has relied upon respondents' letter dated 22nd August, 2014 at pages 405 and 406 of the paper book.

4. In the opinion of this Court, the averment in the respondent's reply that the outstanding due amounts to Rs.4,66,54,961/- cannot be treated as the only amount for which the bank guarantees could be encashed inasmuch as the Court while allowing encashment of the bank guarantees had permitted them to be encashed for fixed and variable charges along with other dues payable. Consequently, without a full trial, it is not possible for this Court to conclude that the respondents have in wilful disobedience of the order dated 30th April, 2014 encashed the bank guarantees amounting to Rs.6,17,17,905/-.

5. A perusal of the paper book reveals that the petitioner has already lodged a claim amounting to Rs.1,06,97,598/- under claim no.3 and a claim of Rs.1,80,55,466/- towards refund of excess amount realised by the respondents by invoking the bank guarantees in question.

6. As a trial on this claim has to be held before the Arbitrator, this Court is of the opinion that it would not be proper to hold a second trial on the same facts in the present contempt petition.

7. Consequently, the present contempt petition is closed with liberty to the petitioner to file a fresh petition in the event a cause of

action arises in its favour after the Arbitrator has rendered his Award.

MANMOHAN, J

APRIL 28, 2017/KA