

\$~42

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

+ **O.M.P. (I) (COMM) 149/2017**

TEKNOW OVERSEAS (P) LTD

..... Petitioner

Through Mr Jayant Mehta, Mr Sumeet Lall and
Mr Sidhant Kapoor, Advocates.

versus

BHARAT HEAVY ELECTRICALS (P)
LIMITED & ANR.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.03.2017**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that the respondents be restrained from encashing the bank guarantee (BG 252GOPG102810001 dated 8th October 2010 in the sum of ₹5,22,315/-) issued by Canara Bank, Okhla Industrial Estate.

2. The learned counsel for the petitioner has drawn the attention of this court to the relevant terms of the bank guarantee which, *inter alia*, reads as under:-

“We, Canara Bank do hereby undertake to pay the amounts due and payable under this guarantee without demur, merely on a demand from BHEL, stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by BHEL by reason of breach of by the said contractor of any of the terms and condition failure to

perform the said agreement or by reason of the contractor failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.5,22,315/- (Rupees Five Lac Twenty two thousand three hundred fifteen only)."

3. The learned counsel has also drawn the attention of this court to a letter dated 04.03.2017 and submits that the said letter of invocation is not in terms with the bank guarantee. The letter of invocation, although alleges that the petitioner has not performed the contractual obligations, there is no assertion that BHEL has suffered a resultant loss. In view of the above, *prima facie*, it appears that the invocation is not in terms of the bank guarantee.

4. It is seen that the amount involved is below the pecuniary jurisdiction of this court. In view of the above, respondent no.2 is restrained from encashing the bank guarantee for a period of seven days from today. In the meanwhile, the petitioner is at liberty to apply to the court of competent jurisdiction for a similar relief. Needless to mention, that if, any such petition is filed, the court shall consider the same uninfluenced by any observation made herein.

5. The petition is disposed of.

6. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

MARCH 30, 2017

pkv