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

+ **FAO(OS) 239/2016**

INDURE PRIVATE LIMITED Appellant
Through Mr. Prashant Mehta, Advocate.

versus

TECPRO SYSTEMS LIMITED AND ANR Respondent
Through Mr. Anoop Bagai, Sr. Advocate with
Mr. Ankit Sibbal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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20.04.2017

This intra-Court appeal impugns order dated 10th June, 2016, whereby
OMP (I) No. 552/2015, *Tecpro Systems Limited Vs. Indure Private Limited*
& *Anr.* has been disposed of. The impugned order refers to the letter of
invocation dated 1st September, 2015 and records as under:-

“19. It is evident from the said letter issued by respondent No.1 informing the bank that in case the petitioner would extend the Bank Guarantees for a further period of six months, the letter be treated as withdrawn. The petitioner has informed that the Bank Guarantees were extended, therefore, the effect of invocation letter has ended.

21. In view of said situation and admission of the respondent No.1 itself in the invocation letter, the same has lost its validity as the respondent No.1 itself has

mentioned in the said letter that if the Bank Guarantees in question are extended, the invocation letter be treated as withdrawn. Further, the undertaking is given that the same would be extended till the date of publishing the award by Arbitral Tribunal.”

2. The contention of the appellant is that they had invoked the bank guarantee by a subsequent letter dated 24th May, 2016 during the pendency of the OMP and on the said aspect the single Judge has not given any observation or finding except for recording as under:-

“20. When this fact was pointed out to the learned counsel for the respondent No.1, who simply mentioned that the respondent No.1 has again invoked the same Bank Guarantees during the end of the month of May, 2016. It is a matter of fact that the respondents are under injunction of this Court. I am not inclined to express any opinion in this regard on this aspect.”

3. During the course of hearing, learned counsel for the parties had drawn our attention to paragraph 22 of the impugned order, which reads as under:-

“22. Thus, without expressing any opinion on merit, the interim order passed by this Court on 24th September, 2015 shall continue during the pendency of arbitration proceedings unless the same is vacated or modified in the Arbitral Tribunal due to change of circumstances.”

4. Counsel for the parties agree that the respondent in the present appeal would file an application before the Arbitration Tribunal within a period of 7

days and till then the bank would not take any further step pursuant to invocation letter dated 24th May, 2016. Thereupon, the Arbitration Tribunal would decide the said interim application on the question of invocation of bank guarantee.

5. We are informed that the next date of hearing before the Arbitration Tribunal is 22nd April, 2017. Copy of this order will be furnished to the learned Arbitrator, who will then fix a date for hearing of the application.

6. The appeal is disposed of.

7. Dasti under signature of the Court Master.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

APRIL 20, 2017
NA