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

\+ O.M.P.(I) (COMM.) 236/2017 & CCP(O) 33/2017, IA 7183/2017

PRAGATI CONSTRUTION CONSULATANTS ..... Petitioner

Through: Mr.Sumit Bansal, Mr.Pankaj Gupta, Advs.

versus

UNION OF INDIA ..... Respondent

Through: Mr.J.K.Singh, Ms.Madhulika Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% **04.12.2017**

This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) has been filed by the petitioner inter alia praying for the following reliefs:-

> *a) Restrain the Respondent from requiring the Petitioner to renew the Bank Guarantee for a sum of Rs.41.60 Lacs being Bank Guarantee No. 0505115BG0000257 valid upto 30.06.2017 and consequently restrain the Respondent from encashing the bank guarantee;*
>
> *b) Direct the Respondent to forthwith release the undisputed amounts of Rs.47 Lacs under the Final Bill and Rs.22 Lacs under the PVC Bill.*

It is submitted by the petitioner that it had been awarded the work of construction of RPSF Headquarters at Daya Basti and 75 Unit Type-I quarters at Rampura Railway Colony along with allied works vide Letter of Acceptance dated 14th January 2009. Subsequently, an agreement was also executed between the parties on 21st February, 2009. It is claimed that the petitioner executed and completed the work on 31st December, 2014 and even the respondent acknowledge the said fact. The performance of the petitioner was found to be outstanding as per the performance certificate dated 27th January, 2015. It is submitted that in terms of clause 28 of the Tender Conditions of the Contract, the period of maintenance was six months from the recorded date of completion and the said period has expired without any defect being pointed out by the respondent. The respondent has also released the balance 5% of the security on furnishing of the bank guarantee by the petitioner to the tune of Rs.41.60 lakhs. It is submitted by the counsel for the petitioner that the respondent, on the one hand is not releasing payment against the final bill raised by the petitioner, while on the other hand, is repeatedly insisting on renewal of the bank guarantee for six months at a time. It is submitted that such renewal of bank guarantee entails charges and the petitioner is facing grave financial hardship because of the continuous renewal of the bank guarantee. It is submitted that the bank guarantee is against deposit of money with the bank and, therefore, the petitioner is doubly prejudiced due to the conduct of the respondent.

The respondent, in its reply has admitted that the maintenance period of the work has expired on 1st July, 2015. It is further submitted that the security deposit, unless forfeited, was to be released to the contractor only after the expiry of the maintenance period and after passing the final bill based on ‘no claim certificate’. It is submitted that before releasing the security deposit, an unconditional and unequivocal ‘no claim certificate’ from the contractor/petitioner was to be obtained. In the present case, the security deposit was released to the petitioner in lieu of the bank guarantee on his request vide letter dated 2nd February, 2015. It is submitted that the final bill submitted by the petitioner is pending administrative approval of competent authority and every effort is being made for expeditious settlement of the issue, but considering the lengthy procedure involved in passing the final bill, at least three more months would be required by the respondent.

It is further submitted that the petitioner should extend the validity of the bank guarantee for a further period of six months failing which the passing of the final bill will get stalled and may cause further delay in settlement of the issue.

I have considered the submissions made by the counsel for the parties. A reading of reply would show that the respondent admits to the completion of the project way back in December, 2014; completion of the maintenance period; and no defect being pointed out to the petitioner till date. It is further stated that the final bill is pending administrative approvals, however, it is not stated that the respondent has any counter claim against the petitioner. This reply of the respondent was filed on 11th September, 2017, therefore, the period of 3 months as prayed for in the reply would also be expiring within the next one week. In my opinion, the respondent cannot endlessly ask the petitioner to keep the bank guarantee alive, specially when for a period of 2 years, it has not raised any claim against the petitioner.

This Court vide its order dated 28th June, 2017 had recorded that the facts show laches on behalf of the respondent in clearing final bill of the petitioner despite various requests by the Arbitrator. It was in these circumstances that this Court had restrained the respondent from invoking the bank guarantee in question. In reply, no valid justification has been given why this bank guarantee has to be kept alive by the petitioner.

In view of the above, I direct that respondent shall process the final bill submitted by the petitioner without insisting on the renewal of the bank guarantee bearing No.0505115BG0000257 for an amount of Rs.41.60 lakhs. The respondent will also not invoke the bank guarantee which has been given to the respondent by the petitioner.

As far as the prayer of the petitioner for a direction to the respondent to release payment against the final bill, this is a subject matter to be decided by the Arbitrator and cannot be granted in a petition under Section 9 of the Act. I am informed that the petitioner has already taken steps for seeking appointment of an arbitrator.

I may only clarify that before the arbitrator all pleas of either party shall remain open and the Arbitrator will adjudicate on the disputes between the parties uninfluenced by any observation made by me in the above order.

The petition is partly allowed in the above terms with no order as to costs.

CCP(O) 33/2017

In view of the detailed order passed in OMP(I)(COMM) 236/2017, in my opinion, no further orders are required in this Contempt Petition at this stage. In case of any non-compliance with the order passed today, it would be open to the petitioner to initiate fresh proceedings in accordance with the law.

NAVIN CHAWLA, J

DECEMBER 04, 2017
RN/vp