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

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Judgment delivered on: 14.07.2017

+ O.M.P.(I)(COMM.) 255/2017

M/S JYOTI STRUCTURES LIMITED

..... Petitioner

versus

POWER GRID CORPORATION OF INDIA
LIMITED & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Kumar Sharma, Mr Sarsij Nayanam and
Mr Jitender Kumar Jha
For the Respondents : Mr Parag P.Tripathi, Senior Advocate with Mr Pawan
Upadhyay, Ms Sharmila Upadhyay, Mr Ratik Sharma and Ms
Mishika Bajpai, for R-1.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

14.07.2017

SANJEEV SACHDEVA, J. (ORAL)

IA Nos.7712-13/2017(both applications for exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 255/2017

1. Issue notice. Notice is accepted by the learned counsel for the respondent No. 1.

2. The petitioner, by the Section 9 petition, seeks a restraint on the

respondent No. 1 from invoking/encashing the two Bank Guarantees dated 05.03.2015 in the sum of Rs.13,16,43,408/- and Rs.8,76,32,147/- issued by the State Bank of Hyderabad (now State Bank of India).

3. The petitioner was awarded the tender for Tower Packages A1, A2 & A3 for 400KV D/C Transmission lines for Lower Subhansiri HEP associated with North East- Northern/Western Interconnector-I. Two separate contracts were awarded; one for Ex-works Supply Contract and the other for Service Contract.

4. Consequent to the two Contracts, the petitioner submitted the above-referred Bank Guarantees.

5. It is the case of the petitioner that respondent No. 1 took a decision to foreclose the Contract and accordingly, on 16.12.2015, the respondent No. 1 took over the stores located at the project site and on 26.12.2015, the respondent No. 1 took over the stores and materials and issued Taking Over Certificates (TOC).

6. As per the petitioner, respondent No. 1 has contended that the stores and materials handed over do not tally and there is a short-fall.

7. Verification and reconciliation between the parties is underway.

8. Petitioner is aggrieved by letter dated 15.06.2017 issued by respondent No. 1 to the petitioner requiring the petitioner to replenish the materials within one month and also to extend the validity of the

Bank Guarantees till 30.11.2017, failing which the Bank Guarantee shall be encashed.

9. Learned senior counsel appearing for the respondent No. 1 submits that since the process of reconciliation is underway, the respondent No. 1 have not yet invoked the Bank Guarantees. He submits that so long as reconciliation process is on, the Bank Guarantees shall not be invoked provided the petitioner keeps the Bank Guarantees alive. He submits that the petitioner should extend the validity of the Bank Guarantees, in the first instance till 30.11.2017.

10. Learned Senior Counsel for the Respondent submits that the respondent No. 1 shall not invoke the Bank Guarantees, as stated above, provided the petitioner extends the Bank Guarantees on or before 31.07.2017, failing which the respondent No. 1 would be at liberty to invoke/encash the Bank Guarantees.

11. Learned counsel for the petitioner submits that petitioner is willing to extend the validity of the Bank Guarantees pending reconciliation.

12. In view of the above, the petition is disposed on the following terms:

- (i) The petitioner shall, on or before 31.07.2017, extend the validity of the Bank Guarantees till 30.11.2017;

- (ii) subject to the petitioner extending, on or before 31.07.2017, the validity of the Bank Guarantee till 30.11.2017, the respondent No. 1 shall not invoke the Bank Guarantee during the process of reconciliation;
- (iii) if the petitioner fails to extend the Bank Guarantee on or before 31.07.2017, the respondent No. 1 shall be at liberty to invoke the same;
- (iv) in case the process of reconciliation is not completed by 31.10.2017, for any reason whatsoever, the petitioner shall extend the Bank Guarantees till 31.03.2018;
- (v) if the process of reconciliation is not completed by 31.10.2017 and the petitioner fails to extend the Bank Guarantee on or before 31.10.2017, the respondent No. 1 shall be at liberty to invoke the same;
- (vi) unless the petitioner receives a formal communication from the respondent No. 1 informing the petitioner that the process of reconciliation is completed and there are no further dues or recoveries to be made from the petitioner, the petitioner shall extend the Bank Guarantee on or before 31.10.2017 for a further period until 31.03.2018.
- (vii) the communication by the respondent No. 1 to the

petitioner that process of reconciliation is over, would be final insofar as the respondent No. 1 is concerned for the purposes of reconciliation and entitlement of respondent No. 1 to invoke the Bank Guarantee

(viii) The parties shall make an endeavour to close the process of reconciliation on or before 31.10.2017.

13. Learned counsel for the petitioner submits that petitioner is seeking to invoke the arbitration clause. Parties shall take steps in terms of Section 9(2) of the Arbitration & Conciliation Act, 1996.

14. The petition is accordingly disposed of.

15. Order *Dasti* under signatures of the Court Master.

JULY 14, 2017/“Sr”

SANJEEV SACHDEVA, J