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

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ARB. A. (COMM.) 19/2017, IA No.8556-8557/2017

NTPC LTD

..... Petitioner

Through : Mr.Puneet Taneja and Ms.Shaheen,  
Advvs.

versus

AMR INDIA LTD

..... Respondent

Through : Mr.Arvind Kumar Gupta and  
Mr.Gajanand Kirodiwal, Advvs.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

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**21.11.2017**

This is an appeal against the impugned order dated 7.5.2017.

Para 10 of the order is relevant and it runs as under :

*“10) Looking to the facts and circumstances to this case, whether out of the total work under the contract till termination of the contract only 49% of the work has been completed and for rest of the work respondent has invoked clause 51.3.1(a), (b) & (c) of GCC Section IV/Part I of 4 of Contract Agreement and execution of the same through other agencies at the risk & cost of M/s AMRIL, pleadings of the parties on the merits of the claims, counter claims is still to be filed, therefore, it would be in the ends of the justice that above referred two Performance Bank Guarantees remain valid during the pendency of this arbitration till the Award is pronounced. However, the third Bank Guarantee i.e. respondent to the*

*claimant, the invocation is found justifiable under the facts & circumstances of the case and accordingly there is no further order in respect of the third Bank Guarantee i.e. Mobilisation Bank Guarantee.”*

A perusal of para 10 of the order shows the learned arbitrator has not given a reason for restraining the petitioner from encashment of performance bank guarantees and for allowing encashment of mobilisation bank guarantee, despite noting reference of various judgments.

Learned counsel for the respondent submits that injunction against encashment of performance Bank guarantee was granted perhaps for the reason the encashment was not asked for by the petitioner in terms of the contract of guarantee between the bank and the petitioner but whereas the learned counsel for the petitioner says the bank was to pay the amount under this guarantee without any demur, reservation, contest or recourse, merely on a demand from the employer if the amount was claimed by reason of breach by the said Contractor of any of the terms or conditions contained in the Agreement or by reason of the contractor's failure to perform the said agreement and such demand made on the Bank was conclusive qua the amount due and payable by the Bank under the guarantee. It is alleged the demand letter for encashment did not specify the reason of encashment as stated above and was incomplete.

Admittedly, the impugned order is not clear as to why the learned arbitrator had distinguished between the two sets of guarantees and the reasons thereof.

In the circumstances the order dated 7.5.2017 of the learned arbitrator is set aside since is devoid of any cogent reason. The learned arbitrator to give reasons for distinguishing between the two set of guarantees. Petition stands disposed of in terms of above.

List before the learned Arbitrator on 29<sup>th</sup> November, 2017. This issue be decided expeditiously.

Dasti under the signature of the Court Master.

**YOGESH KHANNA, J**

**NOVEMBER 21, 2017**  
VLD