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

\+ W.P.(C) 7706/2017

M/S GLOBAL HERITAGE VENTURE LIMITED..... Petitioner

Through: Mr Sohail Dutt, Sr. Advocate with Mr Subodh Pathak and Mr Rohig Agarwal, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC and Mr Satya Prakash Singh, Advocates for R-1.
Mr Sanjeev Narula, Sr. Standing counsel for R-2.
Mr Satish Aggarwala and Mr Vineet Sharma, Advocates for R-3.
Mr Vivek Jain and Ms Mansi Agarwal, Advocates for R-4 & 5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **31.08.2017**

CM No.31853/2017

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "a) Restrain the Respondent No.2 from invoking the bank guarantee furnished by the petitioner before the Respondent No.5;
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> b) Direct the Respondent No.1 to dispose of the representation made by the Petitioner Company;

c) Direct the Respondent No.3 to provide complete record of the investigation done by the Respondent No.3 in relation to the petitioner company;

d) Direct the Respondent 4 & 5 not to handover the DD/Banker Cheque in favour of Respondent No.2, in case even if, the guarantee have been converted into DD/Banker Cheque."

4. It is seen from the above that the petitioner had obtained 27 licences (Authorisations) under the Export Promotion Capital Goods (hereafter as 'EPCG') Scheme during the year 2007-2009 and had also issued various bank guarantees aggregating to approximately ₹6.50 crores. The capital goods were imported duty free against an export obligation and were to be installed in the premises which were being operated by the petitioner. In terms of the EPCG authorizations granted to the petitioner, the petitioner was obliged to fulfil export obligation of a value of equivalent to eight times the duty saved against imports under those EPCG authorizations. The said obligations were to be performed within a period of eight years.

5. Admittedly, the petitioner has been unable to perform its export obligations in terms of the authorizations and the specified period has also expired. However, the petitioner has filed application(s) for extension of period for completion of export obligations and has also sought approval for the export obligation to be performed by its group company. It is stated that a representation in this regard is pending consideration before respondent no.1.

6. The petitioner, essentially, seeks that his representation be disposed of and the bank guarantee issued against the EPCG licences not be invoked.

7. Insofar as the petitioner's prayer for restraining the respondents from invoking the bank guarantees is concerned, the law is well settled. In ***Svenska Handelsbanken v. M/s Indian Charge Chrome and Others***: **(1994) 1 SCC 502**, the Supreme Court had explained the same in the following words:-

> "...in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud and irretrievable injustice involved in the case and fraud has to be an established fraud...
> …irretrievable injustice which was made the basis for grant of injunction really was on the ground that the guarantee was not encashable on its terms…
> ...there should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Mere irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee."

7. In ***U.P. Cooperative Federation Limited v. Singh Consultants an Engineers Pvt. Ltd.***: 1988 (1) SCC 174, the Supreme Court had held as under:

> "The nature of the fraud that the Courts talk about is fraud of an "egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary, not the fraud of somebody else."

8. Although, in ***Hindustan Steel Works Construction Ltd. v. Tarapore & Co. and Anr.***: **AIR 1996 SC 2268** the Supreme Court observed as under:

> "We are, therefore, of the opinion that the correct position of law is that commitment of banks must be honoured free from interference by the courts and it is

> only in exceptional cases, that is to say, in case of fraud or in a case where irretrievable injustice would be done if bank guarantee is allowed to be encashed, the court should interfere."

8. In the present case, there is no doubt that the petitioner has not fulfilled the obligation in terms of the authorization. Mr Narula, the learned counsel for the respondent no. 2 also points out that the assets imported by the petitioner under the EPCG authorisations were also auctioned without any notice to the respondents.

9. The petitioner may be entitled to take credit for export performance of its group company against discharge of its export obligations, however, that issue is still pending consideration. Notwithstanding the same, since none of the ingredients necessary for interdicting a bank guarantee are established, the remedy in this regard cannot be granted.

10. Insofar as the petitioner's request for disposal of its representations for extension of the period for completion of the export obligations, and for the same to be completed by a group company is concerned, the same is merited.

11. Accordingly, respondent nos.1 and 3 are directed to examine and dispose of the same as expeditiously as possible and in any event not later than four weeks from today. The respondent nos.1 and 3 shall pass a speaking order and communicate the same to the petitioner. It is also clarified that the respondents are not restrained from invoking/encashing the bank guarantee. However, in the event, the petitioner prevails in his representation or otherwise succeeds in securing extension of period for

performance of export obligations and discharge of the same by its group company, the amount recovered from the encashment of the bank guarantee shall shall be refunded to the concerned bank to the credit of the petitioner.

12. It is also clarified that invoking/encashment of the bank guarantee shall not prejudice the consideration of the petitioner's application/representation and, in any event, the petitioner is entitled in law to perform the export obligations through a group company and the same would be considered uninfluenced by recovery of any money by virtue of encashment of the bank guarantee(s) in question.

13. The petition alongwith the pending application are disposed of.

14. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

AUGUST 31, 2017
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