

\$~45 & 46 (common order)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 369/2017

L& T MHPS BOILERS PVT. LTD. (FORMERLY
KNOWN AS L&T MHI BOILERS PVT. LTD.)..... Petitioner

Through : Mr. Rajiv Nayyar, Sr. Advocate with
Ms. Shally Bhasin, Mr. Manan Shukla,
Ms. Surabhi Limaye, Mr. Saurabh Seth and
Mr. Karan Lahiri, Advocates.

Versus

SANGAM POWER GENERATION
COMPANY LIMITED

..... Respondent

Through : Mr. S. Venkatesh, Advocate with
Mr. Avishek Raj, Mr. Pratyush Singh, Mr. Vikas
Maini and Mr. Paras Choudhary, Advocates

AND

+ O.M.P.(I) (COMM.) 370/2017

LARSEN & TOUBRO LIMITED Petitioner

Through : Mr. Rajiv Nayyar, Sr. Advocate with
Ms. Shally Bhasin, Mr. Manan Shukla,
Ms. Surabhi Limaye, Mr. Saurabh Seth and
Mr. Karan Lahiri, Advocates.

Versus

SANGAM POWER GENERATION
COMPANY LIMITED

..... Respondent

Through : Mr. S. Venkatesh, Advocate with
Mr. Avishek Raj, Mr. Pratyush Singh, Mr. Vikas
Maini and Mr. Paras Choudhary, Advocates

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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28.11.2017

1. The petitioner has filed these petitions asking the respondent to release, return and discharge the two advance bank guarantees dated 26.09.2017 in OMP 369/2017 and performance bank guarantee dated 25.09.2017 in OMP 370/2017 and also to restrain them from demanding extension, invoking/ encashing the said bank guarantees as mentioned in para (a), (b) and (c) of the prayer of the relevant petitions.
2. It is submitted by Mr. Rajiv Nayyar, learned Senior counsel for the petitioner that vide an undertaking dated 16.07.2016 and also vide letter dated 07.08.2015 the respondents had agreed not to encash the bank guarantee and rather return the bank guarantee. It is further submitted by learned Senior counsel that since the respondent has failed to appoint a nominee arbitrator hence it has occasioned filing this petition.
3. Learned counsel for the respondent submitted that earlier also the petitioner has filed two petitions being O.M.P.(I) (COMM.) 132/2017 and 133/2017 asking for the same reliefs which were disposed of with a consent order dated 10.04.2017, which runs as under:-

“Since the parties are agreeable to have the matters referred to the arbitration, there is no need to continue with the present proceedings. All the contentions and arguments raised by the parties are,

therefore, left open to be adjudicated by the Arbitral Tribunal.

The respondent undertakes not to invoke/encash the bank guarantees in issue till the pendency of the proceedings before the Arbitral Tribunal. The petitioner, in turn, undertakes to keep the bank guarantees alive in the meanwhile. The two advance bank guarantees (i) ABG (Supply) No.0544BG00159410 and (ii) ABG (Erection) No.0544BG00159510 are valid till 30.09.2017. The performance bank guarantee CPBG No.0003BG00043510 which is valid till 23.04.2017 shall be renewed for a further period of three months or till such time the Tribunal is constituted. The original renewed bank guarantees shall be furnished to the Arbitral Tribunal on its constitution.

The parties would be at liberty to approach the Tribunal for appropriate interim reliefs including modification or variation of the orders passed.

The petition is accordingly disposed off.

It is further directed that a common Tribunal be constituted for the disputes in both the petitions.”

4. It is submitted that the parties have agreed that nominee arbitrator had to be appointed by the respondent and that the bank guarantee/performance bank guarantee need to be kept valid till 23.04.2017 and to be renewed for further period of three months and the parties would be at liberty to approach the Arbitral Tribunal.
5. It is further submitted by the counsel for the respondent that they have already appointed Hon’ble Mr. Justice V.N. Khare, a retired Judge of Supreme Court, as a nominee arbitrator and they have obtained his consent as well, so they have complied with the order dated 10.04.2017

6. In these circumstances, both the parties have now agreed that Hon'ble Mr. Justice R.C. Lahoti, retired Chief Justice, Supreme Court be appointed as the Presiding Arbitrator of this Arbitral Tribunal.
7. The bank guarantee/performance guarantee shall be extended by the petitioner for one month from 30.11.2017 and within which period the petitioner need to file an application under section 17 of the Act before the Arbitral Tribunal.
8. Since the Arbitral Tribunal has been appointed, it is agreed this petition be treated as an application under section 17 of the Act.
9. Parties to appear before the Arbitral Tribunal on 08.12.2017 at 6.00 PM at the venue to be fixed by the petitioners.
10. All interim orders to continue till modified by the learned Arbitral Tribunal.
11. Extended bank guarantee shall be furnished before the learned Arbitral Tribunal on that date.
12. In terms of the above, both the petitions stand disposed of.
13. Dasti.

YOGESH KHANNA, J

NOVEMBER 28, 2017

RS