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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 26th October, 2017
Pronounced on: 01st November, 2017

\+ **O.M.P.(I) (COMM.) 382/2017**

ISHVAKOO (INDIA) PVT. LTD. ..... Petitioner
Through: Ms.Lakshmi Gurung, Ms.Easha Kadian, Advocates.

versus

NATIONAL PROJECTS CONSTRUCTION CORPARATION LTD ..... Respondent
Through: Mr.Rajat Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. On 14.11.2002 the letter of intent was issued by the respondent in favour of the petitioner for the project TTZ Heritage Corridor. The total sum of ₹3.50 Crore was released by the respondent to the petitioner against bank guarantees Nos.109-124/2002.

2. On 11.09.2003, the petitioner approached this Court vide OMP No.363/2003 under Section 9 of the Arbitration and Conciliation Act 1996 to restrain the respondent from encashing the bank guarantees.

3. On 12.08.2004, the petitioner invoked the arbitration proceedings and on 15.12.2005 this Court disposed of the petition OMP No. 363/2003 directing the petitioner to keep the bank guarantees alive till the award becomes executable.

4. On 12.12.2016, the learned Arbitrator concluded the proceedings and reserved the matter for pronouncement. On 10.03.2017 the Canara Bank issued a notice under Section 13(2) of the SARFAESI Act to the petitioner. The respondent issued a letter dated 14.09.2017 to the Canara Bank for renewal of the bank guarantees, but it was not done. Thereafter, the respondent encashed the bank guarantees, hence this petition is filed for issuance of directions to the respondent to deposit in this court a sum of ₹3.50 Crore received by the respondent on encashment of bank guarantees till the award becomes executable or be kept in an interest bearing security and hence the amount be protected.

5. There is no dispute the petitioner had violated the order dated 15.12.2005 passed by this Court. The order notes:-

> *"Present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') seeking restraint against the respondent from invoking bank guarantees No.109 to 124/2002 for a total sum of Rs.3 crores 50 lacs issued by Canara Bank, H-Block, Connaught Circus, New Delhi in favour of the respondent. The arbitration proceedings are underway. On 16th September 2003 order was passed recording the undertaking of the petitioner*

to renew these bank guarantees and directing the respondent not to press for encashment of these bank guarantees during the extended period of the bank guarantees. This order was extended from time to time and on 19th August 2004 it was directed that the bank guarantees shall be kept alive by the petitioner till the disposal of this petition. Since the counsel for the petitioner thereafter on 7th July 2005 gave an undertaking that the bank guarantees shall be kept alive till the arbitrator gives the award, the learned counsel for the respondent sought time to have the instructions in the matter.

Mr. Taneja, learned senior counsel appearing for the respondent, states on instructions that the respondent shall not invoke these bank guarantees provided the bank guarantees are kept alive till the arbitrator gives the award and further till the award becomes enforceable as a decree under Section 36 of the Act. However, it is subject to the condition that if after adjudication by the arbitrator it is found that the respondent has to recover the amount from the petitioner, the respondent will be entitled to recover such amount by invoking the bank guarantees. This suggestion is acceptable to learned counsel for the petitioner. The Managing Director of the petitioner is present and statement by the learned counsel for the petitioner is made on instructions from his client.

The petition is accordingly disposed of recording undertaking of the petitioner to the effect that the bank guarantees shall be kept alive till the matter is adjudicated upon *by the arbitrator and even thereafter if petition under Section 34 of the Arbitration Act is filed till the disposal of the said petition. It is also made clear that on the award becoming executable if under the said award the respondent has to recover the amount, the respondent shall be entitled to encash the bank guarantees. IA also stands disposed of."*

6. Though this Court restrained the respondent from encashing the bank guarantees but it was only on a condition the bank guarantees be kept alive by the petitioner. Admittedly, the petitioner failed to keep the bank guarantees alive after September, 2017, hence, were encashed by the respondent. Thus no fault can be seen in the conduct of the respondent and no further orders qua protection of such amount are required.

7. The petition being devoice of merit is dismissed. No order as to costs.

YOGESH KHANNA, J

NOVEMBER 01, 2017

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