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

\+ O.M.P.(I) 36/2017 & I.A. 15446/2017

REGEN POWERTECH PRIVATE LIMITED ..... Petitioner

Through: Mr. Anush Raajan with Mr. Jeevanandahan Rajagopal and Mr. S. Aravindan, Advocates

versus

SEMBCORP GREEN INFRA LIMITED, & ORS. ..... Respondents

Through: Mr. Abhinav Vashisht, Sr. Advocate with Mr. Shankh Sengupta and Ms. Vatsala Kumar, Ms. Prerna Jain, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% 21.12.2017

I.A. 15446/2017

This is an application seeking amendment to the petition.

As the petition is at the initial stage, the application is allowed and the amended petition is taken on record.

O.M.P.(I) 36/2017

Issue notice. Notice is accepted by Mr.Shankh Sengupta, Advocate on behalf of respondent no.2. As no prayer is made/pressed against the other respondents, counsel for the petitioner submits that no notice be issued to these respondents. As far as respondent no.1 in the amended petition is concerned, it has already been deleted from the array of parties vide order dated 11th December, 2017.

Mr.Abhinav Vashisht, learned senior counsel appearing for respondent no.2 submits that no injunction or direction can be granted in the present case as the bank guarantee is yet to be invoked. I have dealt with the above objection and other objections raised by Mr.Vashisht, learned senior counsel, in my detailed order dated 29th November, 2017 passed in OMP (I) No.25/2017 titled *Regen Powertech Pvt. Ltd. vs. Green Infra Wind Solutions Assets Ltd. & Anr.* and passed direction as contained in paragraphs 9 and 10 thereof. The same are quoted hereinbelow:-

> *9) In view of the above, I am of the opinion that at the present stage, the equity between the parties can be balanced by directing the respondent No.1 to give a notice of five working days to the petitioner before invoking the bank guarantees. My above order is not to be construed as expression on merits to the claim of either party and would not bind either party in any future litigation that may ensue upon invocation of the bank guarantee or otherwise by the respondent No.1 or the petitioner. It is re-emphasised that the present order of grant of limited protection to the petitioner is being passed as the bank guarantees are not yet invoked and even notice of default has not been issued by the respondent No.1.*
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> *10) Learned senior counsel for the respondent No.1 submits that grant of such interim protection would in fact leave a door open to similar litigations in other cases by the persons giving such bank guarantee to approach this Court seeking similar relief without any valid apprehension. I am not persuaded by such submissions. The present order is being passed on its peculiar facts and would not be a binding precedent for*

> *other cases. Each case has to be considered on its own merits and this order certainly would not mean that in other cases as well, the party to the contract is entitled to an advance notice before invocation of the bank guarantee.*

For the reasons recorded in my order passed in OMP (I) No.25/2017 titled *Regen Powertech Pvt. Ltd. vs. Green Infra Wind Solutions Assets Ltd. & Anr.*, the present petition is allowed to the extent that the respondent shall give an advance notice of five working days to the petitioner before invoking the bank guarantee as mentioned in prayer (b) of the petition. The caveat given in paragraphs 9 and 10 of the said order shall also apply in the present case.

The learned counsel for the respondent submits that the bank guarantee in question is expiring on 31st December, 2017. He, therefore, submits that the petitioner should be directed to extend the validity to the bank guarantee in accordance with the Agreement.

As I have granted only a limited order of protection in favour of the petitioner, the question of extension of bank guarantee would be dealt with, by both the parties, in accordance with the terms of the Agreement.

The petition is disposed of in the above terms.

NAVIN CHAWLA, J

DECEMBER 21, 2017
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