

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2018

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.85 of 2018

M/s.RPP Infra Projects Limited,
rep. by its Whole Time Director Mrs.A.Nithya
S.F.No.454, Raghupathinaikanpalayam,
Poondurai Road, Erode-2. .. Petitioner

-vs-

1.M/s.NTPC Tamil Nadu Energy Company Ltd.,
Vallur Thermal Power Project,
rep. by its Deputy General Manager

2. Mr.Justice T.Somasundaram (Retd.)

3.Mr.Justice K.Mohan Ram (Retd.)

4.Mrs.Justice Aruna Jagadeesan (Retd.) .. Respondents

Prayer: Petition filed under Section 29-A(4) of the amended Arbitration Act, 2015 to extend the time limit of the Arbitral Tribunal consisting of respondents 2 to 4 for a further period as deem fit by this Court.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Ms.Lilly
for M/s.King and Patridge

ORDER

This petition prays for an extension of the mandate of the Arbitral Tribunal in terms of section 29A of the Arbitration and

Conciliation Act, 1996 (in short 'Act') comprising of respondents 2, 3 and 4 constituted to resolve disputes that have arisen between the parties in terms of clause 34 of the Contract Agreement dated 20.06.2012.

2. Heard Mr.P.J.Rishikesh, learned counsel for the petitioner and Ms.Lilly for M/s.King and Patridge, learned counsel for the respondents.

3. Admittedly, the mandate of the Arbitral Tribunal commenced on 15.11.2016 and the preliminary sitting of the Tribunal was held on 21.12.2016. The mandate of one year expired on 14.11.2017.

4. After detailed hearing, the matter was reserved for orders by the Tribunal on 15.07.2017 and the parties directed to file written submissions on or before 05.08.2017 which was complied with.

5. The parties await the passing of the award.

6. While this is so, the first respondent, by letter dated 08.01.2018, sought to invoke Bank Guarantee No.57/12 dated 25.06.2012 for a sum of Rs.1,79,10,000/-, presumably, on the basis that the mandate of the Arbitral Tribunal had expired.

7. The petitioner thus came to move an Application under section 17 of the Act before the Arbitral Tribunal seeking interim relief restraining the first respondent from invoking the bank guarantee on 8.1.2018, after prior service of the application upon the respondent by

email.

8. The application was taken up for hearing on 09.01.2018 and a status quo of the proceedings relating to invocation of the Bank Guarantee as well as injunction restraining the first respondent from invoking the same till the disposal of the application was granted by the Tribunal, in the absence of the first respondent.

9. A Counter appears to have been filed by the first respondent on 12.01.2018 wherein a preliminary objection has been raised to the maintainability of the interim application on the ground that the mandate of the Tribunal had itself expired.

10. The present request for extension of mandate has been sought in the light of the aforesaid circumstances.

11. A Counter has been filed by the first respondent seriously objecting to the extension sought.

12. Mr. Rishikesh would, at the threshold convey, upon information received from the Arbitral Tribunal, that the final Award is itself ready for pronouncement. No objection is raised by the respondent to the extension of mandate solely to enable the Tribunal to pass the final award. In such circumstances, the mandate of the Arbitral Tribunal is extended upon consent expressed by both learned counsel, by two weeks, i.e., till 13.03.2018, to enable the pronouncement of final award.

Dr.ANITA SUMANTH,J.

13.As far as the interim order obtained from the Tribunal with regard to the bank guarantee, Ms. Lilly has placed on record a copy of Demand Draft dated 08.01.2018 bearing No.991942 issued by the Indian Overseas Bank, to the effect that the Bank Guarantee had been invoked on 08.01.2018 even prior to orders dated 09.01.2018 passed by the Tribunal.

14.Be that as it may and in any event, since the final award is itself imminent, I refrain from dealing any further with the issue of invocation of Bank Guarantee. Suffice it to direct that a status quo be maintained, as of today, in regard to the bank guarantee and the DD dated 08.01.2018 issued by the Indian Overseas Bank.

15.This petition is disposed of in the above terms. No costs.

26.02.2018

vga/sl

Note: Issue order copy on 27.02.2018

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