IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.108 of 2018
and CMP.No.7070 of 2018

M/s.Velohar Infra Private Limited,
rep. by its Director S.Vijayalakshmi,
No.1F, 7th Cross Street,
Woodcreek Country,
Nandambakkam,
Chennai - 600 016. .. Appellant

vs.

1.M/s.Purvankara Limited,
rep. by its Director,
No.130/1, Ulsoor Road,
Bengaluru,
Karnataka
PIN - 560 042.

2.Bank of India,
rep. by its Manager,
Porur Branch,
No.69/1, Kundrathur Road,
Madanandapuram,
Porur,
Chennai - 600 125. .. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 19.3.2018 in O.A.No.116 of 2018 on the file of this Court.

OA.NO.116/2018:

This Original Petition praying this court be pleased to pass an interim injunction restraining the respondent from encash by invoking bank guarantee No.8061IFIBG170001 under the guise of recovering mobilization advance morefullly described hereunder in the schedule.

For Appellant .. Mr.OM.Prakash
Senior Counsel
for Mr.R.K.Ramaiah

For Respondents .. Mr.R.Sathishkumar
for 1st respondent.

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JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

This appeal is against an order dated 19.3.2018 passed by the learned Single Bench, rejecting the application of the appellant for an order of interim injunction restraining the first respondent from encashing/invoking the bank guarantee No.80611FIBG170001.

2. It is well settled that the bank guarantee constitutes an independent contract between the bank and the beneficiary of the bank guarantee and the bank cannot be restrained from honouring the bank guarantee for any breach of the terms and conditions of the contract between the party who furnished the bank guarantee and the beneficiary of the bank guarantee.

3. A bank is bound to honour the bank guarantee if the bank guarantee is invoked in accordance with the terms and conditions of the bank guarantee. If a bank cannot be restrained from honouring a bank guarantee, the beneficiary of the bank guarantee cannot also be restrained from invoking and/or encashing the bank guarantee except in cases of fraud and special equity. What cannot be done directly, cannot be done indirectly. Needless to mention that fraud has to be in relation to the invocation and/or encashment of the bank guarantee.

4. In this case, however, it is admitted that what is presently claimed by the first respondent from the appellant is a sum of Rs.1,06,47,092.83, whereas the bank guarantee furnished is for an amount of Rs.1,58,97,292/-.

5. We modify the order under appeal only to the extent that it will be open to the appellant to furnish, within one week from date, a bank guarantee for a sum of Rs.1,06,47,092.83 on the same terms as the bank guarantee for Rs.1,58,97,292/- had been furnished. For a period of one week from date, status quo with regard to the original bank guarantee already furnished shall be maintained. On furnishing fresh bank guarantee for a

sum of Rs.1,06,47,092.83, the original bank guarantee shall be returned and it will be open to the first respondent to invoke the bank guarantee of Rs.1,06,47,092.83. Invocation of the bank guarantee will abide by the final out-come of the arbitral proceedings.

6. The appeal is, accordingly, disposed of. No costs. Consequently, CMP.No.7070 of 2018 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.R.K.Ramaiah, Advocate sr.no.28643

O.S.A.No.108 of 2018

nr 20/04/2018