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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 124/2016 & I.A. 24304/2015, 2256/2016, 3205/2016

INDURE PRIVATE LIMITED Plaintiff

Through Mr. Vikram Pradeep, Advocate

versus

BHARAT HEAVY ELECTRICALS
LIMITED & ORS

..... Defendants

Through Ms. Mayuri Raghvanshi with
Mr. Vyom Raghuvanshi and
Ms. Sanya Negi, Advocates for D-1.
Mr. Gautam Singhal with Mr. Rajat
Chaudhary, Advocate for D-3.

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Date of Decision: 05th January, 2018.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present suit has been filed for declaration and permanent injunction.
2. The primary relief sought in the present suit is for stay of encashment of bank guarantees furnished by the plaintiff in the favour of Bharat Heavy Electricals Limited (Power Sector – Eastern Region) at Kolkata.
3. The defendant no. 1 in its written statement has raised a preliminary objection with regard to the territorial jurisdiction of this Court to entertain and decide the present suit.

4. Learned counsel for the defendant no. 1 has drawn this Court's attention to Clause 23.2 of the General Conditions of Contract which reads as under:-

"23.2 The contract shall be considered to come into force on the date of notification of Award by the BHEL to the Contractor which may be in the form of a Fax or Award or Letter of Intent:

The law applicable to the Contract shall be the law in force in India. The Courts of Kolkata under this Contract shall have exclusive Jurisdiction in all matters arising under this Contract, including Arbitration Awards."

5. Learned counsel for the defendant no. 1 also points out that advance bank guarantee provides for exclusive jurisdiction of courts within the local limits of whose jurisdiction the company's office at Kolkata is situated.

6. Though in the replication filed by the plaintiff it has been asserted that this Court has the jurisdiction to entertain and decide the present suit, yet today learned counsel for the plaintiff states that he has no objection if the present plaint is returned to him for filing in an appropriate court.

7. Keeping in view the Clause 23.2 of the General Conditions of Contract executed between the plaintiff and Bharat Heavy Electricals Limited (Power Sector – Eastern Region) at Kolkata, this Court is of the view that the courts at Kolkata have exclusive territorial jurisdiction in respect of the matters arising out of or in connection with the contract in question.

8. Since the bank guarantees have been furnished in pursuance to the underlying contract which is governed by Clause 23.2 of the General Conditions of Contract, this Court is of the view that the courts at Kolkata

have the jurisdiction to decide the dispute with regard to encashment of bank guarantees.

9. Consequently, the plaint is directed to be returned to the plaintiff by the Registry of this Court within one week. For this purpose, list the matter before the Joint Registrar on 12th January, 2018.

10. To facilitate filing of appropriate legal proceedings in a Court of competent jurisdiction, if the plaintiff so desires, the interim order dated 24th November, 2015 is extended for a period of four weeks from today. It is made clear that in the event either the plaint is not filed in the court of competent jurisdiction within the aforesaid stipulated period or if no interim order is passed by the competent court within the said time, the interim order passed by this Court shall cease to operate with effect from 5th February, 2018. With the aforesaid directions, present suit and all pending applications stand disposed of.

JANUARY 05, 2018
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MANMOHAN, J