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

\+ O.M.P.(I) (COMM.) 191/2018

M/S IVRCL ..... Petitioner

Through: Mr Sumesh Dhawan and Ms Tannya Baranwal, Advocates.

versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION (DSIIDC) & ANR. ..... Respondents

Through: Ms Renuka Arora, Advocate for R-1/DSIIDC.
Mr Shah Usman, Advocate for R-2/Andhra Bank.
Mr Rachit Bigghe, Advocates for ICICI Bank.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 26.04.2018

<u>IA No.5672/2018</u>

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

> "a) secure the amount of Rs.8,47,26,000/- by keeping the same in an Escrow account till the disputes between the parties are resolved in arbitration;

b) grant an injunction by restraining the Respondent No.1, their agents, servants or any other persons claiming through or under them from invoking or en-cashing the Security Bank Guarantee ("SBG") for a sum of Rs.3,00,00,000/- (Rupees Three Crore Only) issued by Respondent no.2 till the issues being resolved under the Arbitration and Conciliation Act, 1996; and

c) restrain the Respondent No.2 Bank from honoring/en-cashing the schedule bank guarantee; or

d) in alternate in case the Security Bank Guarantee ("SBG") for a sum of Rs.3,00,00,000/- (Rupees Three Crore Only) issued by Respondent No.2 is encashed in the meantime, the same may also be secured by keeping in the escrow account till the disputes between the parties are resolved in arbitration."

3. The respondent (hereafter 'DSIIDC') had floated a tender for the construction of 5552 EWS Houses at Baprola, Delhi in the year 2007. The petitioner had participated in the said tender by submitting its bid. The said bid was accepted and DSIIDC issued a Letter of Acceptance dated 23.01.2008. Thereafter, the parties entered into an agreement dated 15.02.2008 (hereafter the 'Agreement') for execution of the subject works for a consideration of ₹113,45,08,800/-.

4. In terms of the Agreement, the petitioner furnished the performance bank guarantees and security bank guarantees, the particulars of which are set out below:-

S. N	BG. No.	BG Date	BG Amount (INR)	Bank	Valid upto	Purpose
1.	2657BG752008	31.01.08	5,67,26,000	Canara Bank Secunderabad	31.05.18	Performance Guarantee

2.	2009133IBGF0015	04.05.09	1,00,00,000	IDBI Bank Ltd., Hyderabad	31.03.18	Security Deposit
3.	2009002IBGF0040	09.02.09	1,00,00,000	IDBI Bank Ltd., Hyderabad	31.03.18	Security Deposit
4.	2657BG5332014	17.09.14	80,00,000	Canara Bank, Secunderabad	14.10.18	Security Deposit
5.	008BG001101508	08.11.08	1,00,00,000	ICICI Bank Ltd., Hyderabad	30.06.18	Security Deposit
6.	0008BG00094309	31.12.09	2,00,00,000	ICICI Bank Ltd., Hyderabad	30.06.18	Security Deposit
			11,47,26,000			

5. DSIIDC alleges that the petitioner had defaulted in performing the contract and in the circumstances, it had invoked the aforesaid bank guarantees.

6. Admittedly, the concerned bank guarantees have been invoked. The learned counsel appearing for the petitioner submits that at the time when the present petition was filed, bank guarantees to the extent of ₹6,47,26,000/- had been invoked and, therefore, the petitioner had limited its prayer to the aforesaid amount. He states that subsequently, all the bank guarantees have been invoked and paid by the concerned banks.

7. The learned counsel appearing for the petitioner submits that insolvency proceedings have been commenced against the petitioner and an Interim Resolution Professional (IRP) has been appointed. He further submits that in terms of the Insolvency and Bankruptcy Code, 2016, it was

incumbent upon DSIIDC to file a claim before the Interim Resolution Professional and DSIIDC could not have invoked the bank guarantees. He submits that in this view, urgent interim orders are required to be passed to preserve the amount collect by DSIIDC.

8. This Court is not persuaded to accept the aforesaid contention. It is trite law that a bank guarantee is an independent contract and, therefore, notwithstanding the insolvency proceedings which have been commenced against the petitioner, DSIIDC is not precluded from invoking the bank guarantees furnished by the concerned banks. Insofar as securing the petitioner for the amount recovered by DSIIDC is concerned, it is not necessary to pass the said order, as there is no material to apprehend that DSIIDC would not be able to refund the amount if found due from DSIIDC. There are no averments to that effect either.

9. In the above circumstances, the petition is dismissed.

10. It is clarified that this Court has not expressed any opinion as to the merits of the disputes and the petitioner is not precluded from availing of the remedies as otherwise available in law.

VIBHU BAKHRU, J

APRIL 26, 2018
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