

\$~26

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

+ **O.M.P.(I) (COMM.) 210/2018**

IVRCL LIMITED

..... Petitioner

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

versus

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

..... Respondents

Through: Ms Anusuya Salwan and Nikita
Salwan, Advocate for R-1/DSIIDC.
Mr Apoorv Sarvaria, Advocate for R-
2/Andhra Bank.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

11.05.2018

IA No.6554/2018

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 210/2018

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.17,66,56,283/- 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.2,00,00,000/- (Rupees Two 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.2,00,00,000/- (Rupees Two 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 ‘DSI IDC’) had floated a tender for the construction of 7720 EWS Houses at Bawana-III (Poothkhurd), Delhi in the year 2007. The petitioner had participated in the said tender by submitting its bid. The said bid was accepted and DSI IDC issued a Letter of Acceptance dated 30.09.2011. Thereafter, the parties entered into an agreement dated 29.10.2011 (hereafter ‘the Agreement’) for execution of the subject works for a consideration of ₹2,98,16,91,527/-.

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. No.	BG. No.	BG Date	BG Amount (INR)	Bank	Valid upto	Purpose
1.	0008BG00068012	07.10.12	12,16,56,283	ICICI Bank Ltd., Hyderabad	14.09.18	Performance Guarantee
2.	0008BG00020813	16.05.12	2,00,00,000	ICICI Bank Ltd.,	14.04.18	Security

				Hyderabad		Deposit
3.	100613IGFIN0011	19.01.13	2,00,00,000	Andhra Bank, Hyderabad	14.04.18	Security Deposit
4.	0008BG00072215	20.10.14	50,00,000	ICICI Bank Ltd., Hyderabad	10.06.18	Security Deposit
5.	0008BGRR0074517	30.12.16	75,00,000	ICICI Bank Ltd., Hyderabad	19.12.18	Security Deposit
6.	0008BGR0033317	05.08.16	1,50,00,000	ICICI Bank Ltd., Hyderabad	27.07.18	Security Deposit
7.	0008BGR0005318	15.04.17	75,00,000	ICICI Bank Ltd., Hyderabad	03.04.18	Security Deposit
			19,66,56,283			

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 ₹17,66,56,283/- had been invoked and, therefore, the petitioner had limited its prayer to the balance security of ₹2,00,00,000/-. 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 IRP 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

MAY 11, 2018
MK