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

\+ W.P.(C) 5701/2018 & CM No. 34814/2018

M/S S.S. BUILDERS ..... Petitioner
Through: Mr Vipin Gogia, Advocate.

versus

UNION OF INDIA AND ANR. ..... Respondents
Through: Mr Anurag Ahluwalia, CGSC for R-1.
Mr B. P. Singh and Mr Ankur Yadav, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.09.2018**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 11.12.2017 sent by respondent no.2 to the HDFC Bank Ltd., Connaught Place, New Delhi. By virtue of the impugned communication, respondent no.2 had invoked the Bank Guarantee in the sum of ₹36,07,000/- issued by the HDFC Bank at the instance of the petitioner. The petitioner, assails the said communication on several grounds including that the impugned communication was issued without affording the petitioner an opportunity to be heard and without following the principles of natural justice. The petitioner also assails the said action on merits as well.

2. The learned counsel appearing for the petitioner submits that without going into the question as to whether the action of respondent no.2 in

invoking the Bank Guarantee was justified or not. Respondent no.2 is ready and willing to issue a show cause notice to the petitioner and take a decision after hearing the petitioner. He further, states that the amount recovered by invocation of the Bank Guarantee has been kept in an escrow account.

3. In view of the above, the present petition is disposed of with the following directions:-

a) Respondent no.2 shall issue a show cause notice briefly indicating the reasons for invoking the Bank Guarantee in question.

b) The said show cause will be issued within a period of four weeks from today. The petitioner is at liberty to respond to the show cause notice.

c) The concerned officer of respondent no.2 shall take an informed decision within a period of eight weeks for the date of issuance of the show cause notice after affording the petitioner a reasonable opportunity to be heard.

4. It is clarified that concerned officer of respondent no.2 shall take a decision uninfluenced by the fact that respondent no.2 has already invoked the Bank Guarantee.

5. In the event respondent no.2 accepts the petitioner's contention that the Bank Guarantee in question ought not to have been invoked; respondent no.2 shall remit the funds to HDFC Bank on the said bank reinstating the Bank Guarantee.

6. In the event, the petitioner is aggrieved by the action of respondent no.2, the petitioner would be at liberty to avail of such remedies as available in law.

7. It is clarified that all contentions of the parties are reserved and

nothing stated herein should be construed as an expression of opinion regarding the disputes between the parties.

8. The pending application is also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 20, 2018
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