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

\+ W.P.(C) 8126/2016 & CM Nos. 33623/2016 & 37301/2018

IVS GLOBAL SERVICES PVT. LTD. ..... Petitioner

Through: Mr Sukant Vikram, Mr Apurv Chandola, Mr Tuba Mohdi and Mr Jayant Mehta, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC with Mr T. P. Singh, Advocate for UOI.
Mr Arun Sanwal, Advocate for R-4/OBC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **13.09.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "(i) Call for the records of the case;
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> (ii) Issue a writ of Mandamus or any other like writ, order or direction in the nature thereof quashing the impugned order dated 07.09.2016 issued by Respondent no.2 by e-mail.
>
> (iii) Issue a writ of Prohibition or any other like writ, order or direction in the nature thereof restraining the encashment of the Bank Guarantee bearing No.10450039001 dated 26.02.2015 issued by the

Respondent No.4 for an amount of JPY 41,25,000 on the basis of the Impugned Order dated 07.09.2016."

2. The disputes involved in the present petition arise in the context of an agreement dated 27.02.2015 (hereafter 'the Agreement') entered into between the petitioner and respondent no.1 (Ministry of External Affairs), whereby the petitioner agreed to provide Visa Support Services to the Embassy of India, Tokyo (respondent no.3). In terms of Paragraph 6 of the Agreement, the petitioner furnished three bank guarantees, which included a Performance Bank Guarantee (PBG) for JPY 4.125 million. Clause 6(b) of the Agreement, in terms of which the said PBG was furnished, is set out below:-

> "6. **BANK GUARANTEES**
>
> xxxx xxxx xxxx
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> (b) The Service Provider shall provide a performance Bank Guarantee fixed at JPY 4.125 million i.e., 2% of annual expected visa revenue of Government, as per services outsourced, based on the preceding twelve months or US$20,000 whichever is higher, for penalties due as explained under Para 17(iii)-Operational Penalties of this Agreement."

3. The allegation against the petitioner is that during the period 10.08.2016 to 25.08.2016, the petitioner had unauthorisedly collected courier charges at the rate of JPY 730/- per application from various agents. Whereas, according to the petitioner, it was authorised to charge the same; the respondents claim that the said charges were unauthorized and were collected compulsorily.

4. In the aforesaid context, respondent no.2 had issued a show cause

notice dated 12.08.2016 calling upon the petitioner to explain as to why action should not be taken against the petitioner for collecting courier charges from various travel agents.

5. The petitioner responded to the said show cause notice by a letter dated 24.08.2016.

6. The petitioner, *inter alia,* claimed that in terms of Clause 2(iii) and 2(xiv) of the Agreement, the petitioner was entitled to collect the charges of JPY 730/- per application and this was to securely the delivery of the documents in question. The petitioner further claims that the said charges were paid voluntarily by the applicants.

7. The explanation furnished by the petitioner was not accepted by respondent no.2 and by an order dated 07.09.2016 (the impugned order), the petitioner was called upon to deposit an amount of JPY 41,58,810/-. The respondents also invoked the Performance Bank Guarantee (PBG) furnished by the petitioner in terms of clause 6(b) of the Agreement.

8. Aggrieved by the same, the petitioner filed the present petition.

9. After the petition was filed, respondent no.2 sent a letter dated 12.10.2016 providing a detailed response to the petitioner's reply to the show cause notice (dated 12.08.2016). This Court is informed that the petitioner has also sent a communication dated 16.02.2017 countering the contents of the said letter and the note appended thereto.

10. It is also relevant to mention that the order dated 07.09.2016 (the impugned order) is cryptic and does not deal with the explanations that were

advanced by the petitioner, in its reply dated 24.08.2016. This was also noted by this Court in the order dated 15.09.2016. It is obvious that the purpose of sending the letter dated 12.10.2016 by respondent no.2 was to supplant the reasons for passing the order dated 07.09.2016.

11. It is well settled that an authority cannot provide reasons to support an order, which does not reflect the same (See: ***Mohinder Singh Gill v. Chief Election Commissioner: (1978) 1 SCC 405***). In this view, this Court was inclined to set aside the impugned order and remand the matter for consideration afresh. However, on reflection, this Court does not consider it apposite to do so. This is for the reason that respondent no.2 had clearly indicated their stand in the note annexed to the letter 12.10.2016 and little purpose would be served by remanding the matter. More importantly, the dispute involved in the present petition is, essentially, a contractual dispute. The same can be resolved either amicably (as provided under Clause 16 of the Agreement) or by adjudication in an appropriate proceedings. It would not be apposite for this Court to examine the disputes in this case, as it involves disputed questions of fact. Further, the subject dispute is a matter of private law and there is no element of public law involved in the present petition (See: ***Joshi Technologies International Inc. v. Union of India & Ors.: (2015) 7 SCC 728***).

12. At this stage, it is also necessary to observe that the law relating to interdiction of bank guarantee is now well settled and unless it is established that there is fraud of egregious nature, the Courts would not interdict invocation of a bank guarantee (See: ***Svenska Handelsbanken v. M/s. Indian Charge Chrome and Others: (1994) 1 SCC 502*** and ***Larsen &***

Toubro Limited v. Maharashtra State Electricity Board and Others: (1995) 6 SCC 68.)

13. In view of the above, the present petition is dismissed. In the event, parties are unable to resolve the disputes amicably, it will be open for the petitioner to file appropriate proceedings in accordance with law.

14. It is also clarified that this Court has not examined the question regarding the return of other bank guarantees (other than the PBG for JPY 4.125 million, furnished in terms of clause 6(b) of the Agreement) furnished in terms of the Agreement, as the same are not subject matter of the present petition. It would be open for the petitioner to file appropriate proceedings in that regard.

15. The pending applications stand disposed of.

VIBHU BAKHRU, J

SEPTEMBER 13, 2018
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