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

+ **W.P.(C) 9380/2018**

PALTECH COOLING TOWERS AND
EQUIPMENTS LTD

..... Petitioner

Through Mr Saher V. Talwar, Mr Zafar Khurshid,
Advocates.

versus

NATIONAL THERMAL POWER
CORPORATION & ORS

..... Respondents

Through Mr Puneet Taneja, Ms Shaheen,
Ms Laxmi Kumari, Advocates for KBUNL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.09.2018

CM No.36360/2018 & 36361/2018

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

W.P.(C) 9380/2018 & CM No.36359/2018

3. The petitioner has filed the present petition, *inter alia*, praying that the respondents be directed to release the bank guarantees submitted by the petitioner in connection with the contract awarded to the petitioner.
4. The petitioner submit that in terms of the said contract, the bank

guarantees were to be returned to the petitioner after the completion of the defect liability period. He submits that the defect liability period was stipulated upto the period of 18 months from the date of Completion of the Facilities (COF). It is pointed out that the a certificate of COF was provided to the petitioner on 12.07.2017 with the date of completion recorded as 16.03.2016. Thus, according to the petitioner the defect liability period ended on 15.09.2017 and the bank guarantees were liable to be returned to the petitioner after a period of ninety days thereafter.

5. It appears from the averments made in the present petition that the bank guarantees have not been returned and further certain sums payable to the petitioner have also been withheld as the petitioner has not completed the Performance Guarantee Test (PGT).

6. The petitioner states that the PGT was not conducted for reasons attributable to the respondent and the petitioner cannot be faulted on that account. It is also averred that there were certain defects pointed out, however, it is urged that the said defects would not preclude or impede the respondents to conduct the PGT.

7. It is apparent from the above that the dispute involved in the present petition is, essentially, a private dispute and does not have any element of public law. It is also apparent that the same involves disputed question of fact. The learned counsel for the parties state that the contract has a dispute resolution clause.

8. In the aforesaid view, this Court does not consider it apposite to entertain this controversy in this petition.

9. The petition is dismissed leaving it open for the petitioner to avail other remedies. The pending application is also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 07, 2018

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