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

\+ CS(COMM) 1358/2016 & IAs No.12133/2016 (u/O XXXIX R-1&2 CPC) & 12135/2016 (u/S 149 CPC)

BHARAT HEAVY ELECTRICALS LIMITED ..... Plaintiff
Through: Mr. Atul Shankar Mathur, Ms. Priya Singh and Ms. Sweta Singh, Advs.

Versus

PUBLIC ELECTRICITY CORPORATION & ORS ..... Defendants
Through: Mr. Arvind Nigam, Sr. Adv. with Mr. C.A. Sinha, Ms. Sonali Khanna, Mr. Nikhil Sharda and Mr. Mehtaab Singh Sandhu, Advs. for D-3.
Mr. H.S. Parihar and Mr. Kuldep S. Parihar, Advs. for RBI.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

% **11.04.2018**

1. The counsel for the plaintiff states that this suit is identical to CS(COMM) No.1507/2016 and the parties to both the suits are also the same and this suit be also disposed of in terms of orders dated 20th December, 2016 and 23rd February, 2017 in CS(COMM) No.1507/2016.

2. On enquiry, it is stated that service of defendants No.1&2 has been affected.

3. None appears for defendants No.1&2.

4. The senior counsel for the defendant No.3 Deutsche Bank also has no objection to the disposal of this suit in terms of orders dated 20th December,

2016 and 23rd February, 2017 in CS(COMM) No.1507/2016 and in terms of today's order also in that suit.

5. On the pleas aforesaid, duly supported by documents and taking judicial note of the crisis in Yemen, the plaintiff has made out a case for grant of permanent injunction restraining encashment by defendant no.2 Tadhamon International Islamic Bank of the counter guarantee furnished by the defendant no.3 Deutsche Bank AG at the instance of plaintiff and of payment by the defendant no.3 Deutsche Bank AG thereunder, on the ground of special equities. Though the Counter Guarantee is unconditional and unequivocal but the plaintiff has made out the case of payment being not due thereunder. If the plaintiff is correct in its plea and the monies under the Bank Guarantee are released on the ground of defendant no.3 Deutsche Bank AG having agreed to pay notwithstanding any dispute raised by plaintiff, the plaintiff would be placed in an irretrievable position, of being not able to recover the monies owing to the crisis in Yemen. The Courts can certainly interfere in payment under the bank guarantee, even if unconditional and unequivocal, in such circumstances.

6. However at the same time, the interest of defendants particularly defendant no.3 Deutsche Bank AG have also to be safeguarded. The defendants no.1&2 namely Public Electricity Corporation of Republic of Yemen and Tadhamon International Islamic Bank though presently unable to contest this suit, cannot be left remediless with respect to their claims if any against the plaintiff. Similarly, it cannot be forgotten that the defendant no.3 Deutsche Bank AG has a presence outside India and the possibility of

defendant no.1 Public Electricity Corporation of Republic of Yemen and / or defendant no.2 Tadhamon International Islamic Bank claiming from defendant no.3 Deutsche Bank AG outside India cannot be ruled out. It is thus deemed appropriate to order that this order would not come in the way of defendant no.1 Public Electricity Corporation of Republic of Yemen and defendant no.2 Tadhamon International Islamic Bank from legally enforcing their claims against plaintiff and / or defendant no.3 Deutsche Bank AG and which claims plaintiff and / or defendant no.3 Deutsche Bank AG shall be entitled to contest on all pleas available to them. It is further ordered i) that in the event of any claim being made on the defendant no.3 Deutsche Bank AG under the Counter Guarantee No.796BGG1100069 dated 19th January, 2011 subject matter of this suit, the defendant no.3 will immediately inform the plaintiff of the same; ii) that the plaintiff would be entitled to make a representation to the defendant no.3 Deutsche Bank AG and to take such steps as it may be entitled to, to contest such claim and the defendant no.3 Deutsche Bank AG shall not make payment under the claim without the same being adjudicated including on the grounds urged by the plaintiff; iii) till such time, the objection of defendant no.3 Deutsche Bank AG under the Counter Guarantee continues, the plaintiff shall continue to remain liable to the defendant no.3 Deutsche Bank AG.

7. A decree is accordingly passed in favour of plaintiff and against the defendant no.3 Deutsche Bank AG in terms of prayer paragraph (c) and against the defendants No.1&2 i.e. Public Electricity Corporation of Republic of Yemen and Tadhamon International Islamic Bank, in terms of prayer paragraphs (a), (b) and (d) of the plaint and subject to aforesaid.

8. The parties are left to bear their own costs.

9. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 11, 2018
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