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

\+ CS(OS) 1787/2015 & I.A. 12451/2015

M/S. ANGELIQUE INTERNATIONAL LIMITED ..... Plaintiff
Through: Mr. Tarun Singla, Advocate.

versus

STATE BANK OF INDIA AND ANOTHER ..... Defendants
Through: Mr. Atul Kumar Jha, Advocate for defendant No.1.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>O R D E R</u>
% **11.07.2018**

Post filing of the injunction suit, plaintiff has placed on record a response to the present suit received from defendant No.2. The relevant portion of the said response is reproduced hereinbelow:-

"<u>Subject/response against the suit submitted by the plaintiff</u>

We submit this response to you hoping you understand that the war and circumstances in Yemen prevented PEC from taking the required procedures in front the court.

It is clear from the file case that the claim was filed on the basis of that PEC about to confiscate the Advanced Guarantees in pursuant of the letter sent to State Bank of India stipulating to either extended the Guarantees or encash the same which may cause damages to plaintiff interest as the plaintiff cannot proceed the implementation because of the Saudi aggression.

<u>On contrary, it is so obvious to the plaintiff that the Bank</u>

on 5-6-2015, namely before filing the claim, extended the Guarantees until 30-6-2016 [doc.no.(1)] which means the damages which was supposed to be avoided is not existed anymore and the case accordingly shall be dismissed since PEC has no intention at all to encash the Guarantees and there's no later demand regarding this matter.

The above fact has not been mentioned in the suit which constitutes a misrepresentation and misleading by the plaintiff as otherwise the claim does not fall within the interim injunctions procedures.

If the plaintiff intends to cancel the extension or to terminate the contract he may submit a suit through an arbitration tribunal in pursuant of articles (45-46) of the contract [doc.no.(2)]

We assure you that: PEC has no intention at all to confiscate the Guarantees and there are many ways to reach a settlement through which the project can be executed and the plaintiff rights can be paid but the plaintiff refuses to follow the contractual procedures concerning the resolution disputes as mentioned in articles 45, 46 of the contract.

We therefore ask from this Hon'ble Court:
a- cancel the decree and dismiss the suit.
b- order the plaintiff to take the reasonable procedures for solving the dispute as per the contract provision."

(emphasis supplied)

In view of the aforesaid response that the defendant No.2 has no intention to encash the bank guarantees and there is no subsisting letter of encashment, this Court disposes of the present suit as infructuous.

However, this Court directs that in the event the bank guarantees in question are encashed/invoked by the defendants No.2 and 3 in future, the defendant No.1-State Bank of India shall not remit the amount for the period of two weeks. The State Bank of India shall forthwith intimate the receipt of the encashment/invocation letter to the plaintiff. Needless to say, the time period would start from the date of intimation to the plaintiff.

Learned counsel for plaintiff prays for refund of the Court-fees.

This Court in ***Aya Singh Tirlok Singh Vs. Munshi Ram Atma Ram AIR 1968 Delhi 249*** has held as under:-

> *"(4) ....It is true that the Court-fees Act has made certain provisions for refund and it may be argued that the legislative intent should be held to exclude refund in other cases, but the formidable array of authorities upholding the inherent power of the Court to direct refund ex debito justitiae, impels us also to uphold the inherent power.*
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> *It must, however, be clarified that it is not every excess payment of court-fee which must be refunded as a matter of course. <u>Apart from the mandatory provisions, the Court, in order to exercise its inherent power, has to consider the facts and circumstances of each case and come to a judicial determination whether or not the cause of justice requires refund</u>."*
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> (emphasis supplied)

Consequently, Registry is directed to issue to an authorised representative of the plaintiff a certificate authorizing it to receive back from the Collector the full amount of the Court fee paid by it in the present suit.

MANMOHAN, J

JULY 11, 2018

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