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

+ **O.M.P.(I) (COMM.) 410/2018**

BHARAT HEAVY ELECTRICALS LIMITED Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv. and Mr. Ciccuk Mukopadhya, Sr. Adv. along with Mr. Kartik Nayar, Mr. Mohit Mahla, Mr. Saurabh Seen, Mr. Rishab Kumar and Mr. Sarthak Malhotra, Advs.

versus

IDBI BANK & ANR. Respondent

Through: Mr. Sumit Nagpal, Adv. for R-1. Mr. Dayan Krishanan, Sr. Adv. with Mr. Rajat Navet, Mr. Jeevesh Nagraath and Mr. Kushagra Pandit, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

26.10.2018

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I.A. No.14750/2018

1. Allowed, subject to just exceptions.

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2. Issue notice to the respondents.

3. Mr. Nagpal accepts notice for respondent No.1, while Mr. Rajat Navet accepts notice for the respondent No.2.

4. The record shows that the petitioner seems to apprehend that there would be invocation of the subject performance bank guarantee. This

apprehension, according to Mr. Nayar, learned Senior Counsel, who, appears for the petitioner, flows from the letter dated 22.9.2018 addressed by the respondent to the petitioner.

5. It is Mr. Nayar's submission that though there has been no formal invocation of subject bank guarantee, there is an apprehension that it would be invoked and thereafter encashed. Learned Senior Counsel says that apart from anything else the subject bank guarantee was to remain valid only till expiry of the defect liability, and hence it cannot be invoked and/or encashed.

6. Mr. Krishanan, learned Senior Counsel, who, appears for respondent No.2, that is, the contesting respondent, says that the petition is premature, in view of the fact that as yet, respondent No.2 has not invoked and/or attempted encashment of the subject bank guarantee.

7. Mr. Krishanan further refutes the stand taken by the petitioner that the defect liability has expired.

8. In view of the fact that even according to the respondent No.2, there has been no invocation and/or attempt to encash the subject bank guarantee, at this stage, no interference is called for by this Court.

9. However, the captioned petition is disposed of with a direction to the respondents to give a written notice of at least 10 days, if it intends to invoke and/or encash the subject bank guarantee.

10. *Dasti.*

RAJIV SHAKDHER, J

OCTOBER 26, 2018/pmc