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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd January, 2018
Pronounced on: 08th January, 2018

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O.M.P.(I) (COMM.) 356/2017

**IL&FS ENGINEERING & CONSTRUCTION
COMPANY LIMITED**

..... Petitioner

Through : Mr.Sandeep Sethi and Mr.Darpan
Wadhwa, Sr Advocates with
Mr.Arjun Syal, Mr.Ishan Bisht,
Mr.Samarth Chowdhary,
Mr.Aditya Singh and Mr.Shreyan
Das, Advocates.

versus

**PASCHIMANCHAL VIDYUT VITARAN
NIGAM LIMITED & ORS**

..... Respondents

Through : Mr.Parag P Tripathi, Sr Advocate
with Mr.Lav Kumar Agarwal
Mr.Srinivasan Ramaswamy,
Advocates for PVVNL.
Mr.Vivek Jain and Ms.Varisha
Rais, Advocate for PNB/R2.
Mr.Vipin Jai, Advocate for
BOI/R3.

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O.M.P.(I) (COMM.) 453/2017 & IA No.15303/2017

**IL&FS ENGINEERING & CONSTRUCTION
COMPANY LIMITED**

..... Petitioner

Through : Mr.Sandeep Sethi and Mr.Darpan
Wadhwa, Sr Advocates with
Mr.Arjun Syal, Mr.Ishan Bisht,
Mr.Samarth Chowdhary,
Mr.Aditya Singh and Mr.Shreyan
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versus

PASCHIMANCHAL VIDYUT VITARAN
NIGAM LIMITED

..... Respondent

Through : Mr.Parag P Tripathi, Sr Advocate
with Mr.Lav Kumar Agarwal
Mr.Srinivasan Ramaswamy,
Advocates for PVVNL.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. At the outset the learned Senior counsel for petitioner urged to send these petitions under Section 9 of the Arbitration and Conciliation Act 1996 before the learned Arbitral Tribunal since is constituted by treating these petitions as applications under Section 17 of the Act, but however in view of the urgency involved since the entire work of rural electrification is put to hold by interim orders of this Court, I feel it appropriate to deal with these petitions myself.

2. Three issues raised in the above two petitions are qua *a)* termination of contract; *b)* invocation of bank guarantees; and *c)* blacklisting of the petitioner herein.

3. The facts alleged by the petitioner are as under:-

a) On 01.11.2014 petitioner was awarded the work vide Letter of Intent/Letter of Award No.10859/PVVNL/MT/ RGGVV-II/27(5)/2014-15 dated 01.11.2014 in furtherance of bids invited for 'Rural Electrification Work of Villages/Majras of Moradabad District in Paschimanchal Vidyut Vitran Nigam Ltd of Uttar

Pradesh State under RGGVV (12th Plan) against Tender specn. No.PVVNL/MT/RGGVV-II/27(5)/2014-15. The total period of execution of work was 24 months at value of ₹145,55,00,000/-;

b) pursuant to above LOI/LOA on 16.02.2015 two contracts were entered into between the parties bearing Nos.27(s)_(1)/2014-15 (Supply Contract) and 27(s)_(2)/2014-15 (Service Contract) and appropriate bank guarantees were furnished by the petitioner. It is alleged the petitioner faced difficulties in execution of the project and consequently many letters were written by it to the respondent. Despite the delay due to the actions/inaction of the respondent, the petitioner successfully managed to complete about 90% of the work of the contract;

c) on 30.09.2016 the petitioner sought an extension of time from respondent due to inordinate delays attributable to respondent;

d) on 17.02.2017 again extension was sought by petitioner owing to delay in clearing of dues by the respondent No.1 amongst other factors, which letters were never replied;

e) the respondent issued a show cause notice dated 26.08.2017 to the petitioner calling for an explanation as to why the contracts be not terminated and the bank guarantees be invoked;

f) the petitioner replied to said notice vide reply dated 01.09.2017 detailing reasons of the delay and defects pointed out in the said notice;

g) respondent issued the termination notice to petitioner on 04.09.2017 directing invoking of the bank guarantees of petitioner

whereas the respondent has no equitable or legal basis to invoke the bank guarantees of petitioner. Though the petitioner became aware of such order only on 06.09.2017, the order is an arbitrary, illegal, cryptic and even does not refer to reply of petitioner;

h) petitioner alleges the order dated 04.09.2017 was passed without affording any personal hearing to the petitioner and thus violated the principal of natural justice as it has not considered the reply of petitioner;

i) hence, the present petition is filed praying the following reliefs:-

“i. Injunct and restrain the Respondent, its officers, executives etc. from giving effect to the Order dated 04.09.2017 whereby to the extent the Respondent has sought to terminate the Contract, blacklist the Petitioner for a period of one year and further barring the Petitioner from participating in tendering process for a period of one year;

ii. Grant an ex parte ad interim relief in terms of prayer (a);

iii. Confirm the aforesaid order(s) till the final adjudication and determination of the disputes between the parties by the Ld. Arbitral Tribunal to be constituted in accordance with the arbitration clause agreed between the parties.”

4. The learned senior counsel for the respondent on advance notice has appeared and has also argued.

5. The show cause notice dated 26.08.2017 was issued by the respondent contending *interalia* the default in the work of the petitioner and also since last 11 months the petitioner has not been taking interest in completing the project which was of utmost top priority of the Ministry of Power.

6. A reply dated 01.09.2017 to such show cause notice was given wherein various issues qua the difficulties faced by the petitioner in completing the project were highlighted including the land being not made available by the respondent in time; delay in releasing mobilisation advance; delay in approval of route survey drawings; unresolved discrepancies about the survey quantity and estimated quantity; delay in finalization of substation locations/ DC supply; unresolved site handing over issues; delay in providing verified BPL list; delay in preparation of measurement books by employer; delay in electrical inspection; delay due to constrains in energisation; delay in finalization of feeder locations; non issuance /delay in issuance of taking over certificates; and delay in certification and release of RA bill payments and the petitioner sought extensions of time for completion of the project vide various communications in terms of clause No.34.1 of GCC. The reply referred to the work completed in various villages.

7. The learned senior counsel for the petitioner urged all genuine issues were informed by the petitioner qua the quality; and the issues qua the workmanship were attended to by the petitioner to the possible extent as certified in writing by Superintending

Engineer through its letter dated 17.11.2016; the allegations regarding the BPL connections were verified and it was certified that no dues were given by the contractor / employer; many of the notices referred to in the show cause notice were never received by the petitioner and it denied such communications.

8. The following decision was informed to the petitioner vide letter OM No.6259/PVVNL-MT/DDUGJY/12th Plan/27(S)/17-18 dated 04.09.2017:-

“The LOI was issued to IECCL on 01.11.2014 under Deen Dayal Upadhyay Scheme 12th Plan for electrification of 1045 villages and 33/11 KV substations under Moradabad District. The contract duration was 24 months. Two years and 10 months are passed but company could provide electrification to only 933 villages (89.28%) and 717 (68.61%) villages could be charged and out of target of 23523 BPL connections only 11108 BPL Connections (47.22%) could be arranged. In last 11 months the progress is bare minimum (almost 0). Apart from this the Company has given illegal connections, differentiated on the basis of religion which is not in line with REC, bad quality, no corrective action on reports of various investigation Government agencies, LED bulbs not provided to BPL consumers, failed to change damaged material during guarantee period. Due to all this image of ambitious Rural Electrification Scheme of Govt. of India is badly damaged and rural consumers did not get benefit.

In view of above defaults following actions are taken against the company:

1. *Contract with IECCL is terminated,*
2. *All bank guarantee of IECCL, for Moradabad District, is encashed,*
3. *IECCL is barred from participation in tendering process for 1 year,*
4. *IECCL is blacklisted for 1 year.”*

9. The learned senior counsel for the petitioner, argued that admittedly 90% of the villages have been electrified and approximately 47.22% of the BPL connections have been given and though in the last 11 months the progress was minimal but it was only because of the reasons as stated in its reply to show cause which reasons were never noted in the termination order and hence the termination order is cryptic, gives no reason and is liable to be set aside since it states only mechanical facts viz., delay, religion / caste; etc. which have nothing to do with a company of the stature of the petitioner.

It is further alleged substantial payments of the petitioner were withheld; the land was never given in time; the engineers of the respondent never cooperated with the petitioner and rather at the backing of the some political pressure, without giving any proper hearing the respondent had terminated the contract and have black listed the petitioner herein. To press his arguments he relied upon *Mekaster Trading Corporation vs. Union of India and Others* 2003 (71) DRJ 376 wherein this Court held as under:-

“22. It is now well settled proposition of law, laid down by series of judgments, that even an administrative authority is required to support its decision by reasons. Lord

Denning in Breen Amalgamated Engineering Union, (1971) 2 QB 175 (CA) observed that "giving of reasons is one of the fundamentals of good administration". Fairness founded on reasons is the essence of guarantee epitomised in Article 14 of the Constitution. The requirement of giving reason is a shackle on acting arbitrarily and whimsically. It is for this reason that the rule requiring reasons to be given in support of an order is now accepted as a basic principle of natural justice.

23. xxx xxx

24. *Thus, the most impelling consideration for insistence upon disclosure of reasons in support of an order or decision is that it ensures proper application of mind, reduces the possibility of casualness and minimises whim and caprice, and thereby serves to provide legal protection to persons against arbitrary official conduct (See Bhagat Raja v. Union of India, AIR 1967 SC 1606; Travancore Rayons v. Union of India, AIR 1971 SC 862; and C.B. Gautam v. Union of India, 1993(1) SCC 78.*

25. *Another judicial rationale for requirement of reasons is that a person affected by an adverse order is entitled to know why the decision has gone against him or her. 'The decision might be perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made'.*

26. *The recording of such reasons is imperative not only when the administrative authority discharges quasi-judicial function but also it is a pure administrative function*

and the decision is visited by civil or evil consequences as far as affected party is concerned (See Ramesh B. Desai v. Union of India, AIR 1988 Delhi 288). So far as cases of blacklisting are concerned, this requirement will, all the more, be imperative having regard to the spirit of the judgments of the Supreme Court in the cases of M/s. Erusion Equipment (supra) and M/s. Star Enterprises (supra)."

10. Further in *Prakash Atlanta JV & Ors. vs. National Highways Authority of India & Ors* ILR (2010) V Delhi 38 the coordinate Bench of this Court held:-

"26. After discussing the relevant case law concerning the duty to give reasons, including the decision in S.N. Mukherjee v. Union of India, this Court in Mekaster Trading Corp quashed the blacklisting order by observing that "passing the order in such a slip shod manner which has the serious effect of blacklisting the petitioner for a long period of 5 years is certainly not an act of good administration". It observed that "the aforesaid summation cannot be called as "reasons" in support of the order. It can, at best, be termed as conclusion. Apart from this conclusion there is nothing in the order to indicate any supportive reason". This Court pointed out that the link between the material on which conclusions are based and the actual conclusion had to be found. "If that has remained at the back of the mind of the authority passing the order, and has not surfaced on the records of the case, the ingredients of a reasoned order are not met". Further it was emphasized that the

reasons for arriving at the conclusions "should be discernible from the order itself. It is trite law that when authority has omitted to give reasons in the impugned order such a deficiency cannot be supplied by the State by adducing sufficient ground therefore when the validity of the order is challenged"."

11. Hence it was argued by the learned senior counsel for the petitioner the reply to the show cause notice contain four things *(a)* 90% of the villages were energized; *(b)* the petitioner had always asked for the BPL list which was never provided with; *(c)* no opportunity of being heard was afforded; and *(d)* the termination order is devoid of reasons and do not address to issues raised in reply.

12. On the other hand learned senior counsel for the respondent argued since contract entered into between the parties is a determinable contract, hence its specific performance cannot be enforced.

13. Clause 36 of the contract is the termination clause. Its salient features are:-

"36.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub Clause 36.1.

xxx

36.1.3 In the event of termination of the Contract under GCC Sub-Clause 36.1.1, the Employer shall pay to the Contractor the following amounts:

(a) to (e) xxx

36.2 Termination for Contractor's Default

36.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GCC Sub-Clause 36.2:

(a) to (c) xxx

36.2.2 If the Contractor

(a) to (d) xxx

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 36.2.”

14. Clause 36 provides for termination of the contract at the employer's convenience. The employer has a right under the contract to terminate it for any reasons. The contract also provide for the prices to be paid for such termination. Now the question is where the contract is determinable and damages are payable then can such contract be enforced?

15. Section **41(e)** of the Specific Relief Act read as under:-

“41. Injunction when refused.—An injunction cannot be granted—

xxx

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

xxx

Section 14 of the Specific Relief Act says:-

14. Contracts not specifically enforceable.—

(1) The following contracts cannot be specifically enforced, namely:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.”

16. A conjoint reading of both these sections would reveal an injunction cannot be granted to prevent the breach of contract the performance of which cannot be specifically enforced and such contracts include contracts which are in its very nature determinable. Since the contract in question is determinable, *per clause 36 above*, where employer has a right to terminate it by giving any reasons *though may not be to the liking of the petitioner*, the only remedy available to the petitioner under the law would be damages only.

17. I may here refer to *Rajasthan Breweries Limited vs. The Stroh Brewery Company* 2000 (55) DRJ (DB) which notes:-

“Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is a contract which is in its nature determinable. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is no error of law apparent on the face of the award which is stated to be made according to the law governing such cases. The grant of this relief in the award cannot, therefore, be sustained.

xxx xxx

Even in the absence of specific clause authorizing and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the

conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. xxx”

18. Further in *Jindal Steel and Power Ltd. v. Sap India Pvt. Ltd.* 2015 (153) DRJ 225 it was held where the termination has been effected and damages have an adequate remedy, the agreement cannot be revived.

19. Moreso I would also like to refer to *Bharat Catering Corporation vs. Indian Railway Catering and Tourism Corporation Limited (IRCTC) & Anr.* 164 (2009) DLT 530 (DB) which notes:-

“17. Apart from merits, even otherwise, in our view, the scope and ambit of Section 9 do not envisage the restoration of a contract which has been terminated. The learned Single Judge, in our view, rightly held that if the petitioner is aggrieved by the letter of termination of the contract and is advised to challenge the validity thereof, the petitioner can always invoke the arbitration clause to claim damages, if any, suffered by the petitioner. It is not open to this Court to restore the contract under Section 9, which is meant only for the sole purpose of preserving and maintaining the property in dispute and cannot be used to enforce specific performance of a contract as such.”

20. Thus, in view of the above facts and law, especially Section 41(e) and Section 14(c) of the Specific Relief Act, the contract if is determinable, a direction to specifically enforce it cannot be

granted, *much less* under Section 9 of the Arbitration and Conciliation Act. Hence for reasons aforesaid the petition under Section 9 challenging the termination order dated 04.09.2017 is dismissed.

21. Now I come to the issue of *blacklisting*. The case of the petitioner is as black listing entails civil consequences and as State is involved, though in commercial transactions, its action should not injure anyone if devoid of any reason. The learned senior counsel for the petitioner referred to *Mekaster Trading Corporation* (supra); *Prakash Atlanta JV & Ors.* (supra) to highlight-the black listing order if is devoid of reasons it must go.

22. I may once again refer to the show cause notice dated 26.8.2017 issued by the respondent wherein reference is made to various letters issued by the Superintendent Engineer, Electricity Distribution Circle, Moradabad regarding the quality of work and speed at which it was undertaken. Details of 54 such letters have been given. The notice also refer to at least five letters issued by the Chief Engineer, RGGVY, PVVNL, Meerut, Uttar Pradesh asking the petitioner to attend the non conformities issued by PMC M/s Feed Back Infrastructure Limited appointed to monitor the work of electrification of Villages/Majras. The petitioner failed to report compliance. Seven other letters are also referred to issued by the Superintendent Engineer, Electricity Distribution Circle, Moradabad regarding slow progress of the project. Various other issues were raised qua the deposit of electrical inspection fee of the

completed villages for energisation of villages; slackness in not releasing the BPL connections as per the target; replacing the damaged Kv/ Kva, Kva T/F installed by the petitioner; since 6 T/Fs were damaged during the guarantee period and were supposed to be replaced free of cost and at least 12 letters were issued in this regard. Further, discrepancies were found based on caste/religion which resulted in formation of a Committee by REC to investigate the charges and it noted various discrepancies in the work of the petitioner herein as mentioned in the show cause notice and the committee gave its report dated 02.08.2016 asking for punitive action, including black listing of turnkey contractor.

23. Thus the show cause notice reveals the petitioner had failed to comply with the instructions issued from time to time and large number of discrepancies were found even by M/s Erda (TPIA), Vadodara in atleast 208 villages. The inspections were carried out in five model villages in Moradabad District and various defects were pointed out and 15 number of teams were constituted consisting of Executive Engineers, one PMC member, one TPIA or WAPCOS member, to physically verify the work done and its quality, but various discrepancies were noted and informed to the petitioner. Several irregularities were found and thus a final notice was served upon the petitioner through email as to why the agreement for the above work be not terminated along with forfeiting the security/bank guarantees and debarring the petitioner for one year in participating in tender of discom and blacklisting.

24. The show cause notice dated 26.8.2017 issued by the respondent noted *inter alia* the work assigned was to be completed in 24 months i.e. upto 31.10.2016, but even after lapse of 33½ months, the petitioner could only energize 717 villages/mazras out of revised scope of 1045. Also out of total scope of 23523 BPL connections, 11108 connections have been released in 33½ months. Further, no work was reported since last 11 months which show that the petitioner was not taking interest in completion of the project which was utmost top priority with Ministry of Power.

25. Admittedly the reply dated 01.09.2017 was given and on its basis a decision dated 04.09.2017 was taken by the respondent. The reasons therein are alleged to be incomplete/ cryptic and hence submitted the show cause notice dated 26.8.2017 be set aside qua black listing.

26. Admittedly some reasons are given in the decision dated 04.09.2017. These reasons are enough or not poses yet another question qua necessity of giving detailed reasons for passing an order of blacklisting. *Mekaster Trading Corporation* (supra) as relied upon by the petitioner has dealt with the issue of the *extent* of requirement of giving reasons and notes what is needed is not a detailed and elaborate judgment but a brief and pithy statement of reasons for the decision. The administrative authorities, after all, are not discharging the judicial function like that of a Court and, therefore, not required to write an order in the manner in which normally a judgment is written by a court of law. The reasons

given by an authority need be no more than a concise statement of the way in which it arrives at the decision. No particular form or scale of the reasons is insisted upon. The extent and the nature of the reasons depend upon each case.

27. Now where an elaborate show cause notice was given giving details of various notices informing the petitioner of discrepancies noted during investigation of PMC M/s Feed Back Infrastructure Limited besides various letters issued by the Chief Engineer, RGGVY, PVVNL, by CEO (Superintendent Engineer), Electricity Distribution Centre etc sent from time to time giving details of the shortcomings, non conformities; improper work remained incomplete and the petitioner did not care to speed up the work of electrification etc, even replacement of damaged equipment was also delayed, hence it cannot be said while passing order of black listing, the administration did not consider the entire facts. However admittedly no oral hearing was given but, yet undisputedly, it is not a case where out of the blue, one morning the Government took a decision to blacklist the petitioner. A procedure was certainly adopted; various notices were given, reply was called and only then a decision was taken. It is an admitted fact the petitioner is having two other contracts with the subsidiaries of the respondent and is not blacklisted in such concerns. Furthermore the blacklisting is only for an year. Nevertheless during the course of arguments, the learned senior counsel for the respondents fairly conceded since no personal

hearing was given, so the respondent has agreed to accord a personal hearing only on the issue of blacklisting. Thus the respondent is hereby directed to give an oral hearing to the petitioner qua its blacklisting and then to pass a speaking order. This option is given only on the concession given on behalf of the respondent and to this extent the decision dated 04.09.2017 is modified. The petition OMP (I) (Comm) No.453/2017 is disposed of in terms of the above.

28. Lastly, I come to *OMP(I)(Comm) No.356/2017*, a petition under Section 9 of the Act seeking restraint against encashment of the bank guarantees. There are six bank guarantees in all given by the petitioner to the respondent. Two of them are a performance bank guarantee and an additional performance bank guarantee for sums of ₹21,83,25,000/- and ₹4,37,03,942/-. There are four mobilisation advance bank guarantees to the tune of ₹8,77,23,524/-; ₹1,38,36,303/-; ₹8,77,23,524/-; ₹1,38,36,303/- respectively.

29. It is alleged by the petitioner the invocation letters written by the respondent to the bank are not as per the terms of the contract, hence the bank guarantees cannot be ordered to be encashed. The learned Senior counsel for the petitioner referred to a letter dated 07.09.2017 written by the Chief Engineer to the State Bank of India, to Punjab National Bank and to Bank of India, which do not contain the averment *the petitioner has defaulted* and as the invocation is not strictly as per the terms of contract, so per

settled law bank guarantees cannot be allowed to be encashed and hence injunction be ordered.

30. The learned senior counsel for the respondent on the other hand took me to the contents of the bank guarantees. The performance bank guarantee, (page No.117 of the documents of the petitioner) read as under :

*“We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by the Employer duly authorized officer or the authorized officer of Owner **declaring the Contractor to be in default** under the Contract and without cavil or argument any sum or sums within the above named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Contractor to dispute or question such demand.”*

31. The learned counsel for the respondent then referred to a letter dated 07.09.2017 of invocation of this bank guarantee and it encloses a copy of OM No.6259/PVVNL-MT/DDUGJY/12th plan/27(s)/17-18 dated 04.09.2017 - Managing Director of PVVNL, Meerut. The said OM is nothing but a decision taken by the respondent citing grounds for termination, blacklisting and invocation *which grounds are nothing but statements of default*. Hence, it cannot be said the invocation is not in terms of contract.

32. Similarly, the contents of mobilisation Bank Guarantees, (pages No.120-121) notes the following :-

“..... do hereby irrevocably guarantee repayment of the said amounts upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfill its obligations under the terms of the said Contract, and in the event of such failure, refuses to repay all or part (as the case may be) of the said advance payment to the Employer.

Provided always that the Bank's obligation shall be limited to an amount equal to the outstanding balance of the advance payment, taking into account such amounts, which have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract as evidenced by appropriate payment certificates.”

33. Now, the letter dated 07.09.2017 for invocation of the advance guarantee(s) also enclose(s) a copy of the OM No.6259/PVVNL-MT/ DDUGJY/12th plan/27(s)/17-18 dated 04/09/2017 Managing Director of PVVNL, Meerut which in fact disclosing the reasons for invocation. Thus, the invocation of Mobilisation Guarantee is also strictly per terms of the contract. However, *I may note some amount of Mobilisation Guarantees has since been adjusted in the bills and such invocation be limited to the balance amount recoverable under the guarantees.*

34. Thus the contention of the learned senior counsel for the respondent the invocation is not strictly as per terms of the guarantee contract is fallacious. Similarly, no case of fraud or

irreparable loss is made out. In *Uttar Pradesh Sugar Corporation vs. Sumac International Limited* (1997) 1 SCC 568 *inter alia* which held:-

“14. On the question of irretrievable injury which is the second exception to the rule against granting of injunctions when unconditional bank guarantees are sought to be realized the court said in the above case that the irretrievable injury must be of the kind which was the subject matter of the decision in Intex Corpon vs. First National Bank of Boston 566 Fed Supp 1210. xxxx”

35. The present case admittedly does not disclose facts similar to *Intex Corporn* (supra).

36. In view of the above this petition is dismissed. The pending miscellaneous application is also dismissed. I need not repeat the settled law on this.

37. No order as to costs.

JANUARY 08, 2018
M/VLD

YOGESH KHANNA, J