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

+ W.P.(C) 13985/2018

M V OMNI PROJECTS (INDIA) LIMITED Petitioner

Through: Mr Subodh K. Pathak and Ms Prenita
Shekhar, Advocates.

versus

THE CHAIRMAN-CUM-MANAGING DIRECTOR,
NATIONAL BUILDING CONSTRUCTION
CORPORATION LTD & ORS

..... Respondents

Through: Mr Attin Shankar Rastogi and Mr
Prateek Yadav, Advocates for R-1
and R-2.
Mrs Abha Malhotra, Advocate for R-
3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.12.2018

CM No.54724/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 13985/2018 & CM No. 54725/2018

2. The petitioner has filed the present petition, *inter alia*, praying as
under:-

“(i) may pass appropriate writ, order or direction in the nature of
Mandamus or any other appropriate writ, order or direction
directing the Respondents to release the following admitted
payments in connection with the works of constructions of
Infrastructure of CISE, GBS Mahipalpur, New Delhi under CA
NBCC/SBG/DZ-II/MAHIPALPUR/ 2013/622 dated 28.03.2013

Sl. No.	Particulars	Amount (Rs.)
1	Outstanding Balance against RA Bills.	323.95 Lakhs
2	Withheld Amount	233.64 Lakhs.
3	Security Deposit (Cash)	77.90 Lakhs
	Total Payable Amount	635.49 Lakhs.

; and/or

- (ii) May further be pleased to issue appropriate writ, order or direction in the nature of Mandamus directing the Respondents to release and to not encash the following Bank Guarantees of the Petitioner submitted with the Respondent No. 2 in connection to the works of constructions of Infrastructure of CISF, GBS Mahipalpur, New Delhi under CA NBCC/SBG/DZ-II/MAHIPALPUR/2013/ 622 dated 28.03.2013

S. N.	B.G. No.	Date of BG/Validity Period	Amount (Rs.)
1	0505414BG0022821	16.10.2014/ 31.12.2018	25,00,000.00
2	0505414BG0022822	16.10.2014/ 31.12.2018	50,00,000.00
3	0505414BG0022823	16.10.2014/ 31.12.2018	50,00,000.00
4	0505414BG0022824	16.10.2014/ 31.12.2018	50,00,000.00
5	0505414BG0001171	20.08.2015/ 31.12.2018	1,20,00,000.00
	Total Amount:-		2,95,00,000.00
Issued by State Bank of India, Trade Finance Central Proc. Cell, 1 st Floor, Neptune Tower Annex., Ashram Road, Navrangpura, Ahmedabad towards Security Deposit.			
6	0403816BG0000475	28.09.2016	95,00,000.00
Issued by State Bank of India, Overseas Branch, 1 st Floor, Iscon Elegance, Near Sapath-V, Prahlad Nagar Cross Road, SG Highway, Ahmedabad towards Security Deposit.			
7.	3822IGPER000613	17.04.2013/ 31.01.2019	4,29,85,210.00
Issued by Bank of Baroda, Ellisbridge, Ahmedabad towards			

3. The petitioner is engaged in the business of construction and was awarded the contract for the construction of certain infrastructure for the CISF, GBS, Mahipalpur, New Delhi vide a letter of award dated 28.03.2013 issued by the NBCC. It is the petitioner's case that it had handed over the CISF Complex to the respondent (NBCC) in April, 2017.
4. He further submits that the bills have already been finalised, but the admitted amounts have not been released. It is stated that the said works constituted of three separate works, one of which was fully completed and the balance two were completed to the extent of 99%.
5. Further, it is the petitioner's case the amounts have not been released to the petitioner by the NBCC on the pretext that the same have not been received from the CISF. The petitioner states that the said contention is not correct as, in fact, NBCC has received the payment from CISF.
6. The learned counsel appearing for the NBCC submits that the works are incomplete and in addition there are certain defects and, therefore, the sums had been withheld. He further submits that the accounts are yet to be settled and this dispute being a contractual dispute ought not to be entertained in proceedings under Article 226 of the Constitution of India.
7. The aforesaid contention is merited. Plainly, the dispute as to whether the works were completed and there is any defect in the work; or whether any amounts are due and payable under the contract involve disputed question of facts, and it would not be apposite for this Court to examine this controversy in this petition.
8. Insofar as the invocation of the bank guarantee is concerned, the law

relating to the invocation is well settled. The invocation of a bank guarantee cannot be interdicted unless a case of egregious fraud is established. (See: Svenska Handelsbanken v. Indian charge Chrome and Ors.: (1994) 1 SCC 502, Larsen & Toubro Limited v. Maharashtra State Electricity Board and Ors.: (1995) 6 SCC 68). In view of the settled law, no relief in this regard can be granted to the petitioner.

9. In view of the above, the petition is dismissed leaving it open for the petitioner to avail of such remedies as otherwise available in law. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 21, 2018

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