IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.543 OF 2016

Pary and Co. ....Petitioner
vs
Office of the Textile Commissioner & Anr. ...Respondents
.....

Ms. Anubha Rastogi, for the Petitioner.

Mr. S.R. Rajguru, a/w. Ms. Anamika Malhotra, for Respondent No.1.

Mr. Sunil Varma, i/b. Rathina Maravarman, for Respondent No.2 (Corporation Bank).
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CORAM : S.C. GUPTE, J.

DATED: 21 JANUARY, 2019

P.C.:

. Heard learned Counsel for the parties. This arbitration petition, filed under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act'), seeks interim protection against invocation of a bank guarantee. Initially, the letter of invocation stated that the bank guarantee was being invoked “due to administrative reasons”. The terms of invocation required the purchaser to note in its demand that the amount claimed by it was due to it owing to the occurrence of one or both of the two conditions referred to in Clause (2) of the bank guarantee. Clause (a) of Condition (2) referred to failure on the part of the tenderer to furnish performance security for the due performance of the contract and clause (b) referred to failure or refusal to execute the contract. Since the invocation was not in accordance with the terms of invocation, forming part of the bank guarantee, the payment was refused by the bank. The Respondent-State corrected its demand and issued a fresh invocation of the bank guarantee on 15 June 2015. In this letter of invocation, the Respondent-State specifically referred to failure or refusal of the Petitioner to execute the contract, i.e. clause (b) of Condition (2) of the obligations mentioned in the bank guarantee. Since the invocation is now in accordance with the terms of the bank guarantee, no fault can be found with the same. Learned Counsel for the Petitioner, however, submits that there are disputes between the parties arising out of the request for proposals issued by the Respondent-State. The bank, which issues a guarantee, is not concerned with the underlying disputes arising out of the contract of which the bank guarantee forms a part. If the invocation is in accordance with the terms of the contract and there is no egregious fraud, which goes to the root of the matter, or any other special circumstance, as our Court has held in a number of cases, there is no reason for restraining anyone from invoking the bank guarantee or the guaranteeing bank from making any payment thereunder.

2. There is, accordingly, no merit in the arbitration petition. The arbitration petition is dismissed.

3. At the request of learned Counsel for the Petitioner, the ad-interim protection obtaining in favour of the Petitioner is continued for a further period of four weeks.

(S.C. GUPTE, J.)