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

+ **O.M.P.(I) (COMM.) 156/2019**

ANS CONSTRUCTIONS PVT LTD

..... Petitioner

Through: Mr. Sandeep Aggarwal, Senior
Advocate with Mr. Sushil Aggarwal
and Ms. Vasundhra Nayyar,
Advocates.

versus

RAMAGUNDMA FERTILIZER & CHEMICALS LTD & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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24.05.2019

SANJEEV NARULA, J

I.A. 7774/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 156/2019

2. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), seeks restraining order against Respondent Nos. 1 and 2 from invoking the Bank Guarantee No. 50/2016 for an amount of Rs. 1,73,25,810/- issued by Respondent No. 3 (Canara Bank) in favour of Respondent No. 1.

Brief Facts

3. Shorn of unnecessary details, the facts of the case are that the Petitioner is a company engaged in the business of construction and related services. Respondent Nos. 1 is a Joint Venture Company of National Fertilisers Ltd. (NFL), Engineers India Ltd. (EIL) and Fertilisers Corporation of India (FCI) incorporated for setting up Gas based Urea manufacturing plant at Ramagundam. Respondent No. 2 is a company providing Engineering Consultancy Services and EPC (Engineering Procurement Construction) services principally focused on the oil and gas and petrochemical industries. Respondent No. 3 is a Bank which has issued Bank Guarantee in favour of Respondent No. 1. The Respondent No. 2 is the Project Manager of the Respondent No. 1 and also one of its Joint Venture Partner.

4. On 4th January 2016, the Petitioner was awarded the works including site grading, roads, drains for revival of Ramagundam Fertilizer Complex in the state of Telengana ("the Project") by the Respondent No. 1 for a total contract value of Rs.22,05,16,438/-. As per the terms of the contract, the work was to be completed within a period of 8 months i.e. upto 3rd September 2016. The Petitioner submitted a Performance Bank Guarantee Nos. 08/2016 dated 27th January 2016 for Rs. 2,20,51,644/-.

5. The work was completed on 30th September 2017. Time was of the essence of the contract. In case of delay in completion, as stipulated in clause 13.2.1 of the General Conditions of Contract (GCC) (modified in terms of clause 55), the Contract Price was to reduced by 1% per week of delay or part thereof subject to a maximum deduction of 10% of the

Contract Price. In terms of the said clause, after adjustments made to the Contract Price, any amount due to Respondent no. 1 from the Petitioner, could be recovered by invoking the Contract Performance Bank Guarantee. Thus, in terms of the said clause, on account of the delay in completion, another Bank Guarantee No. 50/2016 for Rs. 1,73,25,810/- was furnished by the Petitioner. The said Bank Guarantee was renewed up till 28th February 2019 vide amendment dated 27th November 2018.

6. The case of the Petitioner is that the delay in completion of the work is solely attributable to the faults of Respondent No. 1. The factors causing delay and hindrances in completion of work have been illustrated with the help of the table below:

Sl. No.	Nature of Hindrance	Date of Start of Hindrance	Date of removal of Hindrance	Delay (in days)	Effective Delay
1	Delay in getting the approval for tree cutting	04.01.2016	10.02.2016	38	38
2	Delay in getting the drawings considered from 11.02.2016 to 10.02.2016 is considered in tree cutting	11.02.2016	29.04.2016	79	79
3	Work could not be done due to	07.06.2016	03.10.2016	80	80

	the rains				
4	Hold on clearance and rate finalization for RRM works	04.01.2016	08.08.2016	217	38
5	Hold on fly ash quantity	03.09.2016	10.03.2017	189	159
6	Additional time taken for redoing the removal of fly ash in switchyard and CPP			30	0
7	Non availability of Bitumen	07.05.2017	08.06.2017	33	33
8	Rains	07.07.2017	28.07.2017	22	22
9	Additional time to be given on account of increase in the scope of work of tree cutting which is in critical path			300	300
10	Demonetization	09.11.2016	31.01.2017	84	84

7. A final Bill of Rs. 86,62,905/- was submitted on the Respondent for payment towards execution of the Project. Petitioner then issued the letter dated 9th January 2018 stating that despite the delay there was no loss or effect on the completion of the entire project in totality and in fact the Petitioner has incurred huge financial losses, wastage of resources etc. in addition to the time. The said letter was duly received by the Respondent

No. 1. However no reply was received by the Petitioner to the said letter from the Respondent No. 1. The Respondent No. 1 did not clear the dues of the Petitioner and neither released the Bank Guarantees of the Petitioner as above said.

8. On 18th March 2019, Petitioner invoked Clause 35.2.1 of the contract for negotiation with the Respondent No. 1 for resolving the disputes which were listed out on the said letter. Respondent No. 1 vide letter dated 22nd March 2019 informed the Petitioner that they should attend the meeting scheduled on 25th March 2019 and the said meeting however did not take place on the said date and was conducted on 27th March 2019. In the said meeting, it was recorded that Respondent No. 2 shall respond to the request of the Petitioner for waiver of price reduction, as requested in the letters dated 18th March 2019. However, no response was received by the Petitioner. It is further stated that pursuant to the negotiation on 22nd March 2019, the Respondents released the Performance Bank Guarantee of the Petitioner bearing No. 08/2016 for Rs. 2,20,51,644/-. However, the Bank Guarantee in question was not released. The Respondent No. 1, has invoked the Bank Guarantee vide letter dated 22nd May 2019 and lodged the claim for encashment. Aggrieved with the said invocation, the Petitioner has filed the present petition.

Reasoning and Analysis

9. The Court has heard learned senior counsel for the Petitioner. It is argued that the invocation of the Bank Guarantee is fraudulent, as the Petitioner has completed the contract and Performance Bank Guarantee No. 08/2016 has

been released, clearly indicating that the Petitioner is not at fault. The invocation of the Bank Guarantee issued towards the price reduction, is a fraudulent attempt by the Respondent No. 1. The learned senior counsel for the Petitioner has further argued that the delay in completion of the contract was solely attributable to the Respondent No. 1, as explained in the communications written by the Petitioner to Respondent No. 1. There has been no response to the said communication. Further during the meetings as well, when these issues were discussed, Respondent did not resolve the same and also did not file any claim against the Petitioner. The learned senior counsel argues that since Respondent has not raised any claim, and the Petitioner's claims have not been adjudicated, the invocation of the Bank Guarantee by the Respondent No. 1 is fraudulent and would cause irretrievable injury to the Respondent.

10. Learned senior counsel for the Petitioner in support of his submissions is relying upon the decision of this Court in ***Hindustan Construction Co. Ltd. v. Satluj Jal Vidyut Nigam Ltd.*** AIR 2006 DEL 169, relevant paragraph of which is being reproduced as under:

“25. The conduct of a party in this regard would be a relevant factor to be considered by the court, while deciding such interim applications. The expression 'extraordinary special equities' or 'irretrievable injustice/injury' are not defined expressions. They are to have such connotation and meaning as may be justified with reference to the facts and circumstances of each case. The court has to give such construction which would avoid reduncing, hardship or even repugnancy. The clauses of the agreement between the parties would have to be construed in their simple language so as to implement the essence of the contract. There is no doubt that court has to look into the terms

of the bank guarantee and letter of invocation primarily for the purposes of deciding the fate of a prayed injunctive relief. The undue influence and pressure caused by the respondents on the applicant in extracting extensions, undertakings may not be completely proved on record at this stage of the proceedings, but this is a relevant factor to determine the extent of irretrievable injustice/injury to which the applicant would be exposed, if the encashment of the bank guarantee is permitted. There is an apparent attempt on the part of the respondents to frustrate the findings recorded by the internal determinative adjudicating machinery i.e. CMD's findings as well as the finding of DRB, as afore-referred. Once these findings are against the respondents and it has been held that the applicant is entitled to extension of period, it will be more than unfair to permit the respondents to invoke the bank guarantees at this stage of the proceedings. The cumulative effect of the above analysis of the case is that the respondents have not invoked the bank guarantees in terms of the clause, the action of the respondent in insisting upon encashment of bank guarantees is bound to cause irretrievable injustice and injury to the applicants, who otherwise have a case of special equities in their favor. Another very relevant factor is that after invoking the bank guarantees on 7th July, 2003, the respondents themselves have always agreed not to invoke the bank guarantees on the condition that the applicants would keep the bank guarantees alive. This is true even as on July 2004, when the respondents wrote a letter dated 20.09.2003. Thus, no injustice would be caused to the respondents if the bank guarantees are not permitted to be encashed at this stage, subject to the condition that they are kept alive by the applicants. This course of action would even balance the equities between the parties and would be least prejudicial to the interest of any of the parties. But, if such bank guarantees are permitted to be invoked/encashed, the applicant would suffer an irretrievable injustice and injury because they may not even be able to bear such a financial imbalance, particularly when their claims against the respondents have been allowed by the domestic adjudicating process prescribed under the terms of the contract.”

11. Reliance is also placed on *State Trading Corporation of India v. State Bank of India* (2013) 200 DLT 283 (DB) relevant paragraph of which is being reproduced as under:

“19. The law in relation to bank guarantees has also now attained a wider dimension with the passage of time. Originally the only exception carved out to prevent the encashment of a bank guarantee was fraud. However, subsequent judicial pronouncements have extended this scope by adding other class of cases which would fall in this exception. Cases of irretrievable injury, fraud, extraordinary special equities and invocation of bank guarantee being not in terms of the bank guarantee itself. It is very difficult to draw any straitjacket formula which would universally apply to all the cases. Suppression of facts made by the party against the beneficiary and prima facie there being evidence to show that there is truth in these allegations, would not entitle the party to straightway invoke the bank guarantee. (See Synthetic Foams Ltd. Vs. Simplex Concrete Piles (India) Pvt. Ltd. AIR 1988, Delhi 2007 and Hindustan Construction Co. Ltd. & Anr. Vs. Satluj Jal Nigam Ltd. AIR 2006 Delhi 169. The judgment of Dwarikesh Sugar Industries Ltd.(supra) would have no application; facts of the said case being distinct as admittedly in that case there was no breach of contractual obligation. The ultimate decision of the Swiss Court and the GAFTA having been upheld, it was patently clear that the petitioner had abused his power by invoking the bank guarantee.”

12. It is necessary to note the background under which the Bank Guarantee came to be established. The requirement for issuing of the Bank Guarantee in question is spelt out in Clause No. 55.0 contained in General Conditions of Contract (GCC) which forms the part of the contract between the parties. The said clause reads as under:

“55. PRICE REDUCTION FOR DELAY IN COMPLETION

55.1 Provision mentioned in GCC stands modified to the extent that in case time extension is granted during execution of the contract pending detailed delay analysis, payment against RA bills shall be released to the Contractor without deducting Price Reduction subject to the condition that that contractor submits the additional BG to cover the Price Reduction amount.”

13. It is also important to note the nature of the Bank Guarantee, as envisaged in the preamble of the Bank Guarantee, which reads as under:

“A. M/s ANS Constructions Pvt. Ltd. with its registered office at E2/B1 Exten. Mohan Cooperative, Industrial Estate, Mathura Road New Delhi-110044 (hereinafter referred to as the "Contractor", which expression shall unless repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns) has been awarded a contract by RFCL for Site Enabling Works including Site Grading, Road, Drain for Revival of Ramagundam Fertilizer Complex. (LOA No. RFCL/LOA/1009/006 dated 04.01.2016) (Contract).

B. In terms of Clause 9.4.1 of the Contract, Contractor is required to furnish a Price Reduction Guarantee to RFCL in the form of an unconditional, irrevocable, on demand bank guarantee for securing the Price Reduction made to Contractor in accordance with the Contract ("Price Reduction Guarantee") for Rs. 2,20,51,644/- (Rupees: Two Crore Twenty lacs Fifty One Thousand Six Hundred Forty Four Only) ("The guaranteed Amount").

C. At the request of the Contractor and for sufficient consideration, the Guarantor has agreed to issue this guarantee in favour of RFCL.”

14. The terms and conditions of the Bank Guarantee, read as under:

“1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Contract.

2. The Guarantor shall upon a written demand from RFCL informing the Guarantor that the Price Reduction made to the Contractor has not been adequately adjusted, pay to RFCL, within 5 (five) days of receipt of such written demand from RFCL, without further proof or conditions and without contest, recourse, demur or protest and without any enquiry to RFCL or the Contractor, forthwith and in full amount, without any deductions or set off or counter claims whatsoever, the sum claimed by RFCL in such demand not exceeding an amount equivalent to the Guaranteed Amount. The Guarantor will pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute raised by the Contractor or any other person.

The Guarantor agrees that this Price Reduction Guarantee does not limit the number of claims that may be made by RFCL against the Guarantor provided that such claims taken together shall not exceed the Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that RFCL receives the full amount due hereunder as if no such withholding had occurred.

3. This Price Reduction Guarantee shall be a continuing guarantee during its currency and shall remain in force and effect until the earlier of: (i) date when the Price Reduction has been fully recovered; and (ii) 31.08.2017 upon which the obligations of the Guarantor under this Price Reduction Guarantee shall stand discharged.

4. The obligations of the Guarantor herein are absolute and

unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Contract or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Contractor or any change in ownership of the Contractor or any purported assignment by the Contractor or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Price Reduction Guarantee is in no way conditional upon any requirement that RFCL first attempts to procure the Guaranteed Amount from the Contractor or any other person, or resort to any other means of obtaining payment of the Guaranteed Amount, prior to making recourse to this Guarantee.

5. The Guarantor shall not be required to go into the veracity of any breach or failure on the part of the Contractor or validity of demand so made by RFCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Contractor or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

6. The Guarantor hereby agrees that its liability under this Price Reduction Guarantee shall not be discharged by virtue of any agreement between the Contractor and RFCL, whether with or without the Guarantor's knowledge, or by reason of RFCL showing any indulgence or forbearance to the Contractor.

7. The Guarantor's obligations under this Price Reduction Guarantee for the Guaranteed Amount is primary, independent and absolute and not by way of surety only.

8. The obligations of the Guarantor under this Price Reduction Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would prejudice or diminish the Guaranteed Amount in whole or in part, including (whether or not known to it or RFCL):

a- any time or waiver granted to, or composition with, the Contractor or any other person;

b- any incapacity or lack of powers, authority or legal personality of or dissolutions, or insolvency or bankruptcy, or change in the status of the Contractor or any other Person;

c- any variation of the Contract so that references to the Contract in this Price Reduction Guarantee shall include each variation;

d- any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any unenforceability, illegality, or invalidity of the obligations of the Guarantor under this Price Reduction Guarantee or the unenforceability, illegality or invalidity of the obligations of any person under any other document or guarantee, to the extent that each obligation under this Price Reduction Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;

e- any extension, waiver, or amendment whatsoever which may release a guarantor or the Guarantor (other than performance or indefeasible payment of a Guaranteed Amount); or

f- any part performance of the Contract by the Contractor or by any failure by RFCL to timely pay or perform any of its obligations under the Contract.”

15. A bare perusal of the aforesaid terms clearly shows that the Bank Guarantee here is an unconditional one. The guarantor, on a written demand from the beneficiary is required to make the payment under the Bank Guarantee in question without further proof or condition and without contest, recourse, demur and without any inquiry to the Respondent No. 1 of

the contractor forthwith. Respondent No. 1 has lodged the claim under the Bank Guarantee inter alia stating as under:

“As per provisions of this bank guarantee, Ramagundam Fertilizers and Chemicals Limited is hereby informing that the price reduction made to the contractor has not been adequately adjusted.”

16. The law relating to Bank Guarantee is no longer *res integra*. Bank Guarantee is an independent contract between the Bank and the beneficiary and the dispute between the beneficiary and the party at whose instance, the same is immaterial and inconsequential. The bank cannot avoid the unconditional Bank Guarantee. The Supreme Court in several decisions including *U.P. State Sugar Corporation v. Sumac International Ltd.* AIR 1997 SC 1644; *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company* AIR 2007 SC 2798; *BSES Ltd. v. Fenner India Ltd.* AIR 2006 SC 1148 has consistently held that if the Bank were to go into the questions relating to the dispute between the parties, the very purpose of giving the Bank Guarantee would be defeated. The Courts are thus slow in granting an injunction to restrain the realization of the Bank Guarantee. The only two exceptions carved out to the well known principle of non intervention are: a) Fraud b) Irretrievable injury. The test as to whether the invocation of the Bank Guarantee is fraudulent has also been laid down by the Apex Court in several decisions. The contention of the learned senior counsel is that since the Respondent has not raised any claim and on the other hand, the Petitioner's claims are not adjudicated, the invocation of the Bank Guarantee would be fraudulent, cannot be accepted to be the correct position is law. The court would not interfere with the enforcement of the contract of

guarantee unless there is a specific plea of fraud or special equities in favour of the Petitioner. The fraud has to be of such egregious nature as to vitiate the underline transaction. In the present case, Petitioner has failed to plead and produce any cogent evidence in proof of the fraud. It is not a function of the Bank, nor of this Court, to enquire as to whether due performance had actually happened when, under the terms of the unconditional Bank Guarantee, the Bank is obliged to make payment when the guarantee was invoked , irrespective of any contractual dispute between the Petitioner and the Respondent No.1. The Bank must honour the bank guarantee free from interference by the courts. Otherwise, trust in commerce, internal and international would be irreparably damaged.

17. On the question of fraud, the Supreme Court in ***BSES Ltd. v. Fenner India Ltd*** (supra) has held as under:

“10. There are, however, two exceptions to this rule. The first is when there is a clear fraud of which the bank has notice and a fraud of the beneficiary from which it seeks to benefit. The fraud must be of an egregious nature as to vitiate the entire underlying transaction. The second exception to the general rule of non-intervention is when there are "special equities" in favour of injunction, such as when "irretrievable injury" or "irretrievable injustice" would occur if such an injunction were not granted. The general rule and its exceptions has been reiterated in so many judgments of this Court, See, e.g. U.P. State Sugar Corporation v. Sumac International Ltd. MANU/SC/0380/1997 : AIR1997SC1644 ; State of Maharashtra v. National Construction Co., Bombay MANU/SC/0597/1996 : [1996]1SCR293 . See, also, United Commercial Bank v. Bank of India MANU/SC/0003/1981 : [1981]3SCR300 ; Centax (India) Ltd. v. Vinmar Impex Inc. MANU/SC/0003/1986 : AIR1986SC1924 that in U.P. State Sugar Corporation v. Sumac International Ltd. MANU/SC/0380/1997 : AIR1997SC1644 , (hereinafter "U.P. State Sugar Corporation")

this Court, correctly declared that the law was "settled" per Sujata V. Manohar, J."

18. The second exception relates to the cases where allowing the encashment of an unconditional Bank Guarantee would result in irretrievable harm or injustice to one of the parties concerned. Here again, the Supreme Court in ***U.P. State Sugar Corporation vs. Sumac International Ltd.*** (supra) has defined as to what would be irretrievable injury in the following words:

"The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would over ride the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in some cases"

19. In ***Zillion Infra Projects (P) Ltd. v Fab-Tech Works & Constructions Pvt. Ltd.***, (2015) 224 DLT 371 again it has been held by this Court:

"9. The principles with respect to grant of an injunction in Bank Guarantee cases have been settled by the Supreme Court of India.

10. The Supreme Court in the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. (1988) 1 SCC 174 has held that in order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of Bank Guarantee, there should be serious dispute and there should be good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties.

Otherwise, the very purpose of Bank Guarantees would be negated and the fabric of trading operation will get jeopardised. The Supreme Court further held that commitments of banks must be honoured free from interference by the courts. Otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases, that is, to say in cases of fraud and irretrievable injustice that the court could interfere.

11. The Supreme Court in the case of U.P. State Sugar Corpn. v. Sumac International Ltd., (1997) 1 SCC 568 held that when in the course of commercial dealings an unconditional Bank Guarantee is given or accepted, the beneficiary is entitled to realize such a Bank Guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a Bank Guarantee would otherwise be defeated. The courts should be, therefore, slow in granting an injunction to restrain the realization of such a Bank Guarantee. The courts have carved out only two exceptions. A fraud in connection with such a Bank Guarantee, which would vitiate the very foundation of such a Bank Guarantee. Hence, if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional Bank Guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a Bank Guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country.

12. The Supreme Court in U.P. State Sugar Corpn. (Supra) further held that where fraud is alleged it must be a clear fraud of which the bank has notice. The fraud must be of an egregious

nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud to be fraud of a nature that may absolve a bank from honouring its guarantee. The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. However, the evidence must be clear both as to the fact of fraud and as to the bank's knowledge.

13. On the question of irretrievable injury, the Supreme Court in U.P. State Sugar Corpn. (Supra), held that to avail of this exception, the party seeking an injunction would have to show that exceptional circumstances exist which make it impossible for the guarantor to reimburse himself if he ultimately succeeds and this will have to be decisively established. Clearly, a mere apprehension that the other party will not be able to pay, is not enough. The existence of any dispute between the parties to the contract is not a ground for issuing an injunction to restrain the enforcement of Bank Guarantees. There must be a fraud in connection with the Bank Guarantee.”

20. The facts canvassed before this Court, do not meet the test of the two exceptions stated above. The Court is being called upon to decide the *inter-se* claims, which I am afraid the Court cannot do at this stage. As per the Respondent No. 1, the price reduction made to the contract has not been adequately adjusted. The Bank Guarantee was issued securing the interest of the Respondent No. 1 on this aspect. Thus the invocation is in terms of the Bank Guarantee. It is settled law that the court before issuing the injunction should be satisfied that there is a strong prima facie case of fraud or irretrievable injury and balance of convenience is in favour of issuing injunction to prevent irremediable injury. The Bank Guarantee being an unconditional one, has to be honoured as per its term. The *inter-se* claim

would have to be adjudicated in the arbitration proceedings which are likely to take place between the parties.

21. Although no arguments were addressed with respect to remaining reliefs, nevertheless Court has also examined the same. The court is of the view that such reliefs, being in the nature of directions for deposit of the alleged outstanding amounts, monetary claims, the provision of 'security' in relation to such subject matter cannot be entertained at this stage. No direction can be issued to the respondents for deposit of amounts in anticipation. Directions for making deposits at an interlocutory stage have to be given only in extraordinary circumstances. Giving a direction for furnishing security or deposit of the disputed amounts would amount to determination of the possible extent of the claim that is likely to be awarded in case arbitration proceedings are conducted in near future, which is not possible to do in the facts of the present case. There is also no factual foundation for such claims in the pleadings except of certain demands raised by the Petitioner. Pertinently, having regard to the fact that the Respondent has lodged its claims under the Bank Guarantee, there is no occasion for issuing directions to the Respondent to make deposits of the Petitioner's alleged claims. If the Petitioner were to succeed, it would be by way of a claim for damages, which would require adjudication under arbitration proceedings that would possibly ensue shortly. For the foregoing reasons, the Court does not find any merit in the present petition. Accordingly the same is dismissed with no order as to costs.

22. Needless to say that the opinion expressed by this Court in this order

would not affect the merits of the claims in arbitration.

23. Order be given *dasti*.

SANJEEV NARULA, J

MAY 24, 2019

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