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

\+ CS(OS) 3435/2012

BHARAT HEAVY ELECTRICALS LTD ..... Plaintiff

Through: Mr. Prashant Mehta and Ms. Vasundhra Bhardwaj, Advocates.

versus

M/S PUBLIC ESTABLISHMENT OF ELECTRICITY FOR GENERATION & ORS ..... Defendants

Through: Mr. R.P. Vats, Advocate for D-6. Mr. Harshit Garg, Proxy Counsel for D-7.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% 13.08.2019

<u>I.A. 11071/2019 (under Order 23 Rule 3, CPC)</u>

1. As stated in the Plaint, the brief facts are that a Contract was executed between Plaintiff and Defendant No. 1 for design, manufacturing and supply of equipments, material, transport, insurance tests, execution of civil, election and commissioning works, training and putting into operation of the necessary equipments, machinery and appliances for the extension of the existing Tishreen Thermal Power Station, Syria (2X200MW). Defendant Nos. 2-8, herein are the banks who issued various bank guarantees and letter of credit under the said Contract.

2. The details of various bank guarantees issued under the said Contract are as under:

Performance Bank Guarantees

SL NO.	BG NO. (Syrian Bank Ref No)	Counter BG NO. (SBI Ref No)	BG AMT O/S (FC IN MN)	Syrian Bank Name
1.	09PER075 6-100 dated 01/04/2009	0999609FG0001024 dated 31.03.09	€ 16.00	BYBLOS BANK, SYRIA
2.	09PER075 6-100 dated 01/04/2009	0999609FG0001024 dated 31.03.09	SYP 194.03	BYBLOS BANK, SYRIA
3.	618/09 dated 01/04/2009	0999609FG0001028 dated 31.03.09	€ 11.71	BANK AUDI, SYRIA

Advance Bank Guarantees

SL NO.	BG NO. (Syrian Bank Ref No)	Counter BG NO. (SBI Ref No)	BG NO. (ABC Bahrain Ref No)	BG AMT O/S (FC IN MN)
1.	IGT0105/099 09/10 dated 15/11/2010	0999610FG0002874 dated 26/10/2010	ILG/10/20 034	€25.10
2.	IGT0105/099 64/10 dated 15/11/2010	0999610FG0002875 dated 29/10/2010	ILG/10/20 035	SYP 139.25

3. The said contract could not be completed on account of the outbreak of a civil war in Syria. The Plaintiff had carried out substantial part of the work for the project, but owing to conditions beyond its control and force majeure, Plaintiff could not execute the contract completely. These

circumstances resulted into filing of the present suit seeking the relief of declaration and permanent injunction against Defendant No. 1 from invoking the Bank Guarantees.

4. The Court vide its order dated 13th December 2012 and 17th December 2012 granted ex-parte ad-interim injunction in favour of the Plaintiff thereby restraining the Defendants from encashing the bank guarantees or debiting Plaintiff's account with respect to the abovesaid contract. Defendant Nos. 1 to 4 were proceeded ex-parte vide order dated 30th April 2013. Likewise, Defendant Nos. 5 and 8 have also been proceeded ex-parte vide order dated 29th August 2013. Thus Defendant Nos. 6 and 7 are the only contesting parties in the present suit.

5. By way of this application, Plaintiff is seeking a decree in terms of the settlement arrived at between the Plaintiff and Defendant No. 1 as recorded in the Minutes of Meeting dated 17th January 2019 and 12th – 14th May 2019. The Plaintiff is not seeking a decree qua the contesting Defendants i.e. Defendant Nos. 6 or 7. Mr. Prashant Mehta learned counsel for the Plaintiff submits that notwithstanding Defendant No. 1 being ex-parte, the Court has the jurisdiction to pass a decree on the basis of the compromise arrived at between the parties under Order 23 Rule 3, CPC. He submits that aforesaid provision only requires the Court to be satisfied that there is a compromise in writing which has been signed by the parties. In this regard, he refers to the Minutes of Meeting, held on 12th to 14th May 2019, copies whereof have been placed on record along with the application. It is submitted that the aforesaid Minutes contains the settlement whereby, Defendant No. 1 has

agreed to pay the bank commission charges, as additional compensation to the Plaintiff or directly to the bank and has committed to arrange cancellation of all existing Bank Guarantees (BGs). Defendant No. 1 has also agreed to pay an amount of 5.34 million euro (which is claimed by Plaintiff from Defendant No. 7) through the extension of Letter of Credit issued by Defendant No. 4. In this regard, reliance is placed on Column 1 and 2 of the minutes of meeting dated 17th January 2019.

6. Further, a parallel settlement has taken place between Plaintiff, Defendant Nos. 1 and 7 wherein it has been agreed by Defendant Nos. 1 and 7 that SWIFT messages would be issued for cancellation of bank guarantees and the invocation notice to Defendant No. 6- State Bank of India, will be revoked.

7. It is also urged that, vide minutes of the meeting dated 12th -14th May 2019, Defendant No. 1 further confirmed the issuance of letter dated 9th May 2019 wherein Defendant No. 1 ratified the withdrawal of the invocation of bank guarantees and communicated their express acceptance for payment of bank charges to the Syrian Banks and has also agreed to cancel / release the bank guarantees, thereby arranging for an unconditional SWIFT message from the Syrian banks to Defendant No. 6.

8. Mr. Mehta also contends that in furtherance of the settlement all the performance bank guarantees have been discharged on 13th June 2019, whereas with respect to the advance bank guarantees Defendant. No. 1 informed Plaintiff vide its letter dated 11th July 2019 that it has instructed Defendant No. 4 to cancel the same. He submits that in fact Defendant No. 1

has issued instructions to the banks for cancellation of the advance payment guarantees/performance BG. Defendant No. 1 had in its letter dated 9th May 2019, agreed with the contents of the letter for releasing/discharge of the BG. Pursuant to the instructions received from PEEG, a SWIFT message was generated by Byblos Bank Syrian (SA) and Bank Audi Syria (SA). The said letters have been placed on record. He submits that in terms of the aforesaid communications, the BGs stand discharged. The relevant paragraph of the letter dated 11th July 2019 reads as under:

> "With reference to a/m subject and your letter No. IO-TH/SYIl/PEEG/456 dated 11 07 2019 concerning the cancellation of the Advance Payment Guarantee ,we inform you that PEEG has instructed Commercial Bank of Syria (CBS)for cancellation the following advance payment guarantees related to the a/m project:

SL NO.	BG NO. (Syrian Bank Ref No)	Counter BG NO. (SBI Ref No)	BG NO. (ABC Bahrain Ref No)	BG AMT O/S (FC IN MN)
1.	IGT0105/09909/10 dated 15/11/2010	0999610FG0002874 dated 26/10/2010	ILG/10/20034	€25.10
2.	IGT0105/09964/10 dated 15/11/2010	0999610FG0002875 dated 29/10/2010	ILG/10/20035	SYP 139.25

> Further instructions from CBS for cancellation the a/m Bank guarantees will be sent to State Bank of India (SBI) sooner."

9. Plaintiff has also placed reliance on the Minutes of Meeting dated 27th March 2019 between Plaintiff and Defendant No. 7, which forms part of the settlement agreement placed on record. Reliance is also placed on facsimile letters issued by Syrian Arab Republic, Ministry of Electricity, Public Establishment of Electricity for Generation (PEEG) implementing the terms of the settlement, dated 9th May 2019, which inter alia records as under:

> "Please be informed that the related Syrian authorities agreed in its letter no. 6515/1 dated 08.05.2019 to release BHEL from Paying the Bank Guarantee fees and authorized PEEG to pay these fees to the Syrian Banks, Bablos Bank, Audi Bank and commercial bank of Syrian instead of BHEL with total value equal to /20I2000/ Euro Provided that BHEL be undertaken to the following:
> 1. Return the BHEL staff to the site and resume the activities within a month from the date of releasing of BG and paying the related fees by PEEG.
> 2. BHEL to withdraw the court case on against Exim Bank of India sooner after releasing the BG.
> 3. The fees of the BG will part of BHEL compensation.
> In case the BHEL will not fulfilled its obligations concerning the resuming the site activities, putting the units into operation and withdrawing the court case. PEEG have the right to claim BHEL about the paid BG fees."

10. Learned counsel for Defendant No. 7, does not dispute the documents purporting to be the minutes of meeting dated 12th – 14th May 2019, however he submits that the said document is not a settlement and merely records the Minutes of Meeting. Be that as it may, the Plaintiff on the basis of the said minutes is not seeking a decree qua Defendant No. 7. Learned counsel for Defendant No. 6- State Bank of India, submits that if the suit were to be decreed in terms of the settlement between Plaintiff and Defendant No. 1, it should be clarified that such settlement does not affect the rights of Defendant No. 6 to take recourse for the recovery of BG charges in terms of the contract between the Plaintiff and Defendant No. 1. On this issue, Mr. Mehta submits that no BG charges are payable to Defendant No. 6.

11. I have considered the contention of the parties, it is pertinent to note that no relief has been sought in the present suit qua the recovery of the BG charges. The only relief qua Defendant No. 6 is for a decree of permanent injunction, restraining the said bank from encashing/extending the counter BGs and counter advance BGs.

12. On the basis of the minutes of meeting dated 12th - 14th May 2019, which have been marked as Exhibit C1, the Court is satisfied that a compromise/settlement has been arrived at between Plaintiff and Defendant No. 1. Accordingly, a compromise decree is passed in terms of the said settlement- Exhibit C1, which shall form part of the decree.

13. Decree sheet be drawn up in terms of the minutes of meeting dated 12th – 14th May 2019 i.e. Exhibit C1. Para 5 and 6 of the same read as under:

> "5. PEEG informed that payment of agreed compensation of Euro 54,220,087 would be arranged by them from the second tranche of the Line of Credit (LOC) to be extended by Government of India <GOI) through Exim Bank of India. PEEG informed that they would approach the competent authorities in GOI through Government of Syria for enhancing the LOC portion accordingly. PEEG further informed that in case the enhanced LOC does not materialize, PEEG would pay the entire compensation from their own funds during the execution of services under the contract.
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> 6. Regarding withdrawal of invocation of bank guarantee and acceptance of Corporate Guarantee, PEEG has vide letter dated 9th May 2019, communicated their acceptance for payment of BG charges to the Syrian banks. BHEL agreed with the contents of the said letter, and PEEG, shall Cancel/ release the bank guarantees and arrange a unconditional SWIFT message in this

> regard from Syrian Banks '(Sank Audi, Byblos Bank and CBS) to SBI within a period of two working days. On receipt of the SWIFT message by SBI, BHEL will withdraw the court case against all stakeholders including Exim Bank of India (EXIM) within one week."

14. In view of the above settlement it is declared that the BGs stand discharged. It is however clarified that the aforesaid decree shall not affect any of the rights of Defendant No. 6 or the Plaintiff to raise any dispute in respect of the BG charges.

15. The Plaintiff does not press for any other relief against any of the other Defendants. Accordingly the suit is disposed of. The interim orders dated 13th December 2012 and 17th December 2012 stands vacated.

16. This order be given *dasti* under the signature of the Court Master.

SANJEEV NARULA, J

AUGUST 13, 2019
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