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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1324 of 2020

M/s Bihar Construction And Asha Construction (JV), Having Office At Darri Road, Korba, Chhattisgarh, Through Its Lead Member M/s Bihar Construction Company, Prop. Mahendar Singh, Aged About 70 Years, S/o Late Kalyan Singh, Darri Road, Korba, District Korba Chhattisgarh.

---- Petitioner

Versus

1. South Eastern Coalfields Limited, Through Its Chairman Cum Managing Director, Office At Seepat Road, Bilaspur, District, Bilaspur Chhattisgarh.
2. The General Manager (CMC) , South Eastern Coalfields Limited, SECL Headquarter, Seepat Road, Bilaspur, District - Bilaspur Chhattisgarh.
3. The General Manager, South Eastern Coalfields Limited, Raigarh Area, Office At Chhote Atarmuda, Raigarh, District Raigarh Chhattisgarh.
4. Area Finance Manager, South Eastern Coalfields Limited, Raigarh Area, Office At Chhote Atarmuda, Raigarh, District - Raigarh Chhattisgarh.
5. H.D.F.C. Bank Limited, Through Its Branch Manager, H.D.F.C. Bank Limited, Branch Office Shop No. 7 -14, Ground Floor, Krishna Crown, Raigarh, District Raigarh Chhattisgarh.
6. H.D.F.C. Bank Limited, Wholesole Banking Operations, 646/1, Power Hose Road, Korba, District Korba Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ravindra Agrawal, Advocate
For Respondents/SECL	:	Mr. Vaibhav Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/06/2020

1. The challenge in the present writ petition is to the impugned order dated 17.06.2020, whereby the respondents have issued an instruction to the concerned Bank for invocation of the bank guarantee executed by the petitioner.

2. From the plain reading of the impugned order dated 17.06.2020, it reflects that there was a contract given by the respondents to the petitioner, which entered

into some rough weather and ultimately the contract had to be terminated vide order dated 15.05.2020. While terminating the contract the respondents have pointed out certain recoveries to be made from the petitioner/establishment on account of non-performance of the contract. Vide the impugned order the respondents now seek to invoke the bank guarantee which has led to the filing of the present writ petition.

3. So far as the scope of interference to an order of invocation of bank guarantee, the law is by now well settled. In the case of "**Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.**" (2007) 8 SCC 110, it has been very emphatically laid down by the Hon'ble Supreme Court that under what circumstances can the High Courts or for that matter the Courts of law can interfere in an order of invocation of bank guarantee. Relevant paragraphs of the aforesaid judgment are reproduced herein under:

> **"10. The law relating to grant or refusal to grant injunction in the matter of invocation of a Bank Guarantee or a Letter of Credit is now well settled by a plethora of decisions not only of this court but also of the different High Courts in India. In U.P. State Sugar Corporation Vs. Sumac International Ltd. [(1997) 1 SCC 568], this court considered its various earlier decisions. In this decision, the principle that has been laid down clearly on the enforcement of a Bank guarantee or a Letter of Credit is that in respect of a Bank Guarantee or a Letter of Credit which is sought to be encashed by a beneficiary, the bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. Accordingly this Court held that the courts should be slow in granting an order of injunction to restrain the realization of such a Bank Guarantee. It has also been held by this court in that decision that the existence of any dispute between the parties to the contract is not a ground to restrain the enforcement of Bank guarantees or Letters of Credit. However this court made two exceptions for grant of an order of injunction to restrain the enforcement of a Bank Guarantee or a Letter of Credit. (i) Fraud committed in the notice of the bank which would vitiate the very foundation of guarantee; (ii) injustice of the kind which would make it impossible for the guarantor to reimburse himself.**
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> **11. Except under these circumstances, the courts should not readily issue injunction to restrain the realization of a Bank**

Guarantee or a Letter of Credit. So far as the first exception is concerned, i.e. of fraud, one has to satisfy the court that the fraud in connection with the Bank Guarantee or Letter of Credit would vitiate the very foundation of such a Bank Guarantee or Letter of Credit. So far as the second exception is concerned, this court has held in that decision that it relates to cases where allowing encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. While dealing with the case of fraud, this court in the case of U.P. Coop. Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd. (1988) 1 SCC 174 held as follows:

> *The fraud must be of an egregious nature such as to vitiate the entire underlying transaction.*

While coming to a conclusion as to what constitutes fraud, this court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA V/s. Chase Manhattan Bank (1984) 1 All ER 351 (CA) which is as follows:

> *"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. But the evidence must be clear both as to the fact of fraud and as to the banks knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a banks Credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged.ʎ"*

14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit :-

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit.

(iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned."

The said judgment of the Hon'ble Supreme Court has been further reiterated in subsequent decisions also.

4. Given the aforesaid judicial pronouncement by the Hon'ble Supreme Court and the law as it stands today, this Court finds it difficult to entertain the writ petition in the absence of the petitioner's meeting any of the conditions otherwise stipulated in the said judgment of the Hon'ble Supreme Court. Though this Court is reluctant to entertain the writ petition and is not entertaining the same that by itself would not preclude the petitioner from approaching the concerned Civil Court for redressal of its grievance.

5. Reserving the liberty of the petitioner for approaching the Civil Court for the recourse available to him, the writ petition fails and is accordingly rejected.

6. Counsel for the petitioner at this juncture submits that till date he has not been officially served with the copy of the termination order. The respondents are directed to ensure that the order of termination of contract dated 15.05.2020 is served upon the petitioner on his approaching them without any further delay.

Sd/-
(P. Sam Koshy)
Judge

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