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

+ **O.M.P.(I) (COMM.) 65/2020**

TBEA ENERGY INDIA PRIVATE LIMITED Petitioner

Through: Mr.Jayant K. Mehta with Mr.Vinam
Gupta, Mr.Gibran Naushad &
Mr.Parv Garg, Advs.

versus

GE T&D INDIA LIMITED & ANR. Respondents

Through: Mr.Ravi Sikri, Sr. Adv. with Mr.Ajay
Bhargava, Mr.Aseem Chaturvedi &
M.Milind Sharma, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **13.03.2020**

1. This is a petition under Section 9 of the Arbitration and Conciliation Act seeking following reliefs:-

“a. Restrain Respondent No. 1 from presenting the Bank Guarantee No. 406BGG1800070 dated 19.04.2018 for encashment to Respondent No. 2;

b. Direct Respondent No. 2 to refuse and return any request made by Respondent No. 1 for encashing the Bank Guarantee No. 406BGG1800070 dated 19.04.2018;

c. Direct Respondent No. 1 to return the Bank Guarantee No.406BGG1800070 dated 19.04.2018 to the Petitioner;

d. Pass any other/further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present matter.”

2. Learned counsel for the petitioner submits that vide communication dated 28.02.2020, the respondent no.1 has directed the petitioner to extend the validity of the existing bank guarantee being BG No.406BGG1800070 dated 19.04.2018, which is expiring on 31.03.2020 (with a claim period upto 30.06.2020) upto 16.01.2021 (with a claim period upto 16.04.2021). The said letter further informs the petitioner that in case the bank guarantee is not extended in accordance with the directions contained therein, the existing bank guarantee would be encashed and the said letter would be treated as a formal claim for encashment of the bank guarantee.

3. After some arguments, learned counsel for the petitioner submits that since the petitioner intends to invoke arbitration expeditiously, he has instructions to state that the petitioner instead of pressing the present petition will invoke arbitration within one week along with an appropriate application before the learned Arbitrator seeking interim relief as prayed for herein and in the meanwhile extend the bank guarantee for a further period of three months i.e. upto 30.06.2020 (with a claim period upto 30.09.2020). He however, prays that this Court may restrain the respondents from encashing the bank guarantee till the petitioner's application is taken up for consideration by the learned Arbitrator in the arbitration proceedings which the petitioner proposes to invoke.

4. At this stage, learned Senior counsel for the respondents submits that once the petitioner is willing to extend the bank guarantee upto 30.06.2020 (with a claim upto 30.09.2020), the letter

of 28.02.2020 issued by the respondent, insofar as it seeks encashment of bank guarantee be treated as withdrawn with liberty to the respondents to issue a fresh letter qua the same bank guarantee, if the need so arises.

5. In the light of the aforesaid stand taken by the learned counsel for the parties, while disposing of the petition as not pressed, it is made clear that in case, the respondents were to issue a fresh letter qua the same bank guarantee before the initiation of arbitration proceeding, the said letter would not be enforceable for a period of two weeks. This interim protection of two weeks would however be subject to any orders passed by the learned Arbitrator, meaning thereby that in case, the petitioner's application for interim relief is taken up by the learned Arbitrator before any fresh letter is issued by the respondent, this interim protection will not prevail and the parties will be governed by the orders passed by the learned Arbitrator on the application for interim relief.

6. The petition is accordingly disposed of as not pressed with the aforesaid clarification.

DASTI.

REKHA PALLI, J

MARCH 13, 2020

gm