

Via video conferencing

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

+ **O.M.P.(I) (COMM.) 268/2020**

SHAPOORJI PALLONJI AND COMPANY PRIVATE LIMITED

..... Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv.
Mr.Sonali Jaitley Bakhshi, Mr. Jaiyesh Bakhshi,
Mr. Pallav Pandey, Mr. Arbaaz Hussain and
Mr.Gaurav Mishra, Advs.

versus

THE INDURE PRIVATE LIMITED & ANR. Respondent

Through: Mr.Prashant Mehta, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **07.09.2020**

I.A. 7816/2020 (exemption)

1. Allowed, subject to all just exceptions.

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2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:-

“A. Direct Respondent No. 1 to return original Advance cum Performance Bank Guarantee No. 171020261470-AA dated 04 February 2010 & all extensions thereof in original.

B. Restrain Respondent No.1, its principal officers, servants, agents, and any other and all others acting for and on their behalf from encashing the Advance cum

Performance Bank Guarantee No. 171020261470-AA.

C. Restrain Respondent No. 2, its principal officers, servants, agents, and any other and all others acting for and on their behalf from acting on any subsequent letter seeking extension or encashment or the Advance cum Performance Rank Guarantee 171020261470-AA.

D. Direct the Respondents, its principal officers, servants, agents, and any others acting for and, on their behalf, to maintain status quo and refrain them from taking any steps pertaining to Advance cum Performance Bank Guarantee No.171020261470-AA dated 04 February2010”

E. Pass any such further or other orders in favour of the Petitioner and against the Respondents as this Hon'ble Court may deem fit.

3. Learned senior counsel for the petitioner submits that the project, in respect whereof the Composite Advance-cum-Performance Bank Guarantee for a sum of Rs.4 crores was furnished by the petitioner on 04.02.2020, stands completed on 30.06.2014 and commercial operations thereof, started on 30.12.2014. He submits that even though the purpose for which the bank guarantee was furnished stands fulfilled, the petitioner has been repeatedly directed by the respondent to extend the bank guarantee, which it has been accordingly extending. The bank guarantee was lastly extended by the petitioner on 26.03.2020, with a validity date of 30.06.2020 and a claim period till 31.12.2020, pursuant to the respondent's letter dated 04.03.2020, whereunder the petitioner was threatened that in case the bank guarantee is not extended, the existing bank guarantee would be

invoked. He further submits that while the petitioner has been trying to resolve the matter amicably with the respondent, the respondent has on 02.09.2020, once again, unjustifiably directed the petitioner to extend the bank guarantee for a further period of 6 months.

4. However, after some arguments, Mr. Wadhwa, learned senior counsel for the petitioner submits that even though there is no reason as to why, after five years of the completion of the project, the petitioner should be directed to extend the performance bank guarantee, he has instructions to state that the petitioner, without prejudice to its right to invoke arbitration and/or take other legal remedies assailing the respondent's action, is willing to extend the bank guarantee for a further period of six months in terms of the respondent's request dated 02.09.2020.

5. On the other hand, learned counsel for the respondent, opposes the petition by contending that the same is premature in the light of the admitted position that the respondent has till date not taken any steps to invoke the bank guarantee. He further submits that even otherwise, the parties have been, till recently, trying to amicably resolve the matter and therefore, till date, neither the respondent has invoked the bank guarantee, nor the petitioner has any cause to approach this court.

6. Having considered the submissions of the parties, I am of the view that the present petition may not be really termed as pre-mature since the petitioner has not only sought an order seeking restraint of the invocation of bank guarantee, but has also sought a direction for return of the original Advance-cum- Performance Bank Guarantee

dated 04.02.2010 along with all extensions thereof, on the ground that the same has fulfilled its purpose. However, keeping in view the admitted position that the bank guarantee has not been invoked by the respondent till date, the petition is disposed of by directing that subject to the petitioner extending the existing bank guarantee within two days from today, the respondent will give 10 days' notice to the petitioner before invoking the same, so as to enable the petitioner to avail of its legal remedy as permissible under law.

7. Needless to state that this Court has not expressed any opinion on the rival submissions of the parties regarding the validity of the respondent's actions. It will, therefore, be open for them to take all pleas permissible in law in any subsequent proceedings.

8. The petition is, accordingly, disposed of with liberty as prayed for.

REKHA PALLI, J.

SEPTEMBER 7, 2020

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