

Via video conferencing

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

+ **O.M.P. (I)(COMM)300/2020**

JINDAL STEEL AND POWER LIMITED

..... Petitioner

Through Mr.Gopal Jain, Sr.Adv with Mr.Sumit
Attri, Ms.Gauri Rasgotra, Mr.Saket Sikri,
Ms.Nikitha Shenoy, Mr.Siddhanth Sharma, Advs.

versus

STATE TRADING CORPORATION OF INDIA LTD & ORS.

..... Respondents

Through Mr.Tarkeshwar Nath with Mr.Harshit
Singh, Advs for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

21.09.2020

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1. The present petition has been listed before this Court upon an urgent mentioning before Hon'ble the Judge In-charge(Original Side).

I.A. 8405/2020

2. Allowed, subject to all just exceptions.

O.M.P. (I)(COMM)300/2020

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

(i) Stay the operation of the letter bearing Ref: No.STC/CO/EI/RAI/00028/2016/135 dated September 18, 2020 issued by the Respondent No.1, STC to the Petitioner and Respondents 2 and 3.

(ii) Direct the Respondent No.1 not to invoke and/or encash the Performance Bank Guarantees No.2158IGPER003116 for INR

81,94,00,000 and No.2158IGPER003216 for INR 90,000/- respectively both dated March 3, 2016 till further orders;

(iii) Restrain the Respondent No.1 from taking any coercive steps against the Petitioner in relation to Performance Bank Guarantees No.2158IGPER003116 for INR 81,94,00,000 and No.2158IGPER003216 for INR 90,000/- respectively both dated March 3, 2016 till further orders;

(iv) Pass ad-interim order(s) in terms of prayers (i) to (iii) above;

(v) Direct that the costs of this application/petition be paid by the Respondent No.1;

4. After some arguments, learned senior counsel for the petitioner, on instructions, submits that even though the initial order dated 14.07.2020 passed by the Hon'ble Supreme Court required the petitioner to extend the bank guarantees only by a further period of two months, the petitioner is agreeable to extend them for a further period of four weeks from today, with a further condition that in case the Arbitral Tribunal is either not set up or does not take up the petitioner's proposed application under Section 17 of the Act within this period of four weeks, the bank guarantees will keep being suitably extended by two weeks at a time.

5. On the other hand, Mr.Tarkeshwar Nath, learned counsel for the respondent no.1 submits that the very basis on which the petitioner has approached this Court, i.e., the alleged failure of the respondent no.1 to appoint its nominee Arbitrator, is factually incorrect as the said respondent has not only appointed its nominee Arbitrator on 11.09.2020, but has also deposited the requisite fees with the Indian Council for Arbitration. He, however, has no objection to the

aforesaid course of action proposed by the petitioner.

6. In view of the aforesaid stand taken by the parties, the petition is disposed of by directing the petitioner to extend the bank guarantees in question by a further period of four weeks, instead of three months as required by the respondent no.1 in its letter dated 18.09.2020. It is made clear that in case, for any reason whatsoever, the Arbitral Tribunal is not constituted and the petitioner's proposed application under Section 17 of the Act is not taken up for consideration by the learned Tribunal within the next four weeks, the petitioner will continue keeping the bank guarantees alive by extending them by two weeks at a time.

7. However, keeping in view the petitioner's apprehension that the bank may require 2-3 days' time to extend these bank guarantees, it is directed that the invocation of bank guarantees, in terms of the letter dated 18.09.2020, shall be kept on hold for the next three days to enable the petitioner to get them extended in terms of this order.

8. Needless to say, as already observed by this Court on 20.04.2020, in case the petitioner succeeds in arbitration, it will be open for the learned Tribunal to determine whether the costs incurred by the petitioner in extending the bank guarantees need to be restituted or not.

9. The petition stands disposed of in the aforesaid terms.

REKHA PALLI, J

SEPTEMBER 21, 2020

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