

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1654 of 2021**

Technodrillers, A Registered Partnership Firm, Through Its Partner Moolchand Jain, S/o. Late Shri Phoolchand Jain Resident Of C-135, Sector 5, Tagore Nagar, Raipur, District Raipur, Chhattisgarh.

---- **Petitioner**

Versus

1. Electrotherm (India) Limited, Address Survey No.72 Palodia via Thaltej, Ahmedabad Gujarat, Through Its DGM Sales And Marketing, Electrotherm (India) Limited, Address Survey No. 72 Palodia via Thaltej, Ahmedabad, Gujarat.
2. Bank Of Baroda, Through Chief Manager, Branch Vivekanand Nagar, B-1, Shailendra Nagar, Raipur, District Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner : Mr. Ashish Surana, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

22.03.2021

Heard

1. The instant petition is to arrest the demand of payment by letter dated 25.02.2021 which is addressed to the petitioner by the Bank. The background of the case that the respondent No.2 Bank gave Bank Guarantee to the respondent No.1 in response to terms of commercial transaction in between petitioner and respondent No.1.
2. Learned counsel for the petitioner would submit that the condition of the Bank Guarantee was that the Guarantee can be invoked when the loss is sustained because of the supply for the reason of any breach of the condition of the agreement. It is submitted that against the terms of agreement, the Bank Guarantee was invoked by two letters dated 12.12.2019 & 18.12.2019 by Annexure P-15. He would submit that the Bank Guarantee by the time since had expired, therefore, the petitioner filed a civil suit with a prayer that the payment against the Bank

Guarantee should not be released. Initially there was an injunction passed, however, subsequently the civil suit was dismissed for which the first appeal is pending. Counsel for the petitioner would submit that now the recent letter have been issued by the Bank to repay the over due amount of Rs.96,19,822/- which works out after settlement as a result of invocation thereby the payment of Bank Guarantee, therefore, that may be stayed.

3. Perusal of the documents would show that it is an inter-se contract. The Bank Guarantee was given by the respondent No.2 to respondent No.1 and the respondent No.1 having invoked the Bank Guarantee in the Month of December, 2019 the Bank has released the amount to the respondent No.1. The Bank Guarantee was given on behalf of the petitioner. The averments of the petition would show that the invocation of the Bank Guarantee was subject of challenge in the civil suit. Initially there was a protective order passed in favour of the petitioner, subsequently the civil suit was dismissed for which the first appeal is pending before the Court. Now as a result of that payment, the Bank has sought for re-payment of the amount back from the petitioner. Therefore, the very genesis of the case of invocation of Bank Guarantee was subject of challenge in the civil suit and the same having been dismissed and the amount of Bank Guarantee was released, the petitioner has again sought for an injunction/ stay for restraining the Bank from recovery of the amount, which is paid. As a result, the issue which is raised herein is highly disputed question of facts and breach of terms if any are required to be established for which civil suit on the issue is already pending.
4. Initially the civil suit was filed, the same having been dismissed, the first appeal is preferred. Therefore, inter se issue would be same subject matter which is highlighted herein. This Court cannot draw a parallel

proceeding only on the submission of the petitioner as necessarily in order to resolve the issue it will require extensive evidence by the parties, terms of the agreement of the contract, terms of the Bank Guarantee and the breach thereof. The substantial prayer to stay the invocation of Bank Guarantee has been dismissed and thereafter the Bank having made the payment, as of now has recalled to liquidate the outstanding dues after other all set off. Any interference at this stage would amount to allow the circumvent the finding of civil suit, which already stands dismissed. Therefore, this Court in exercise of power under Article 226 of the Constitution of India will not draw a parallel proceeding to assume the fact of disputed question. The petition therefore having no merit is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Aks