

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED 30.03.2021  
CORAM  
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN  
WP.No.8375/2021 & WMP.No.8931/2021

Power Grid Corporation of India Limited  
Government of India Enterprise,  
Having its registered office at  
B9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi 110 016  
and its Corporate Office at  
Saudamini Plot No.2, Near IFFCO Chowk  
Gurgaon, Haryana 122 001.

..Petitioner

Versus

1.The National Company Law Appellate Tribunal  
[NCLAT], Chennai Bench, 6<sup>th</sup> Floor  
Ezhilagam Annex Building, Chepauk  
Chennai 600 005.

2.Aster Private Limited  
[Corporate Debtor]  
[CIN U32204TG1998PTC29457]  
Having its registered office at  
Plot No.141/11, Phase II, IDA  
Cherlapally, Hyderabad, Telegana 500 051  
represented by Resolution Professional  
Shri Naren Sheth.

3.Punjab National Bank  
Large Corporate Branch  
Centenary Building  
28, MG Road Branch  
Bangalore 580 001.

4.IDBI Bank Limited  
Hyderabad Main Branch  
5-9-891, Chapel Road  
Post Box No.370,  
Hyderabad 500 001.

5.Axis Bank Limited  
Credit Management Centre  
6-3-879/B, First Floor  
G Pulla Reddy, B1, Greenlands,  
Begumpet Road, Hyderabad 500 016.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1<sup>st</sup> respondent to expeditiously take up the application for interim relief seeking extension of the Bank Guarantee executed by the respondents 2 to 5 in favour of the petitioner in the appeal filed by the petitioner on 27.03.2021 before the 1<sup>st</sup> respondent against the order dated 24.03.2021 passed by the National Company Law Tribunal, Hyderabad in IA.No.337/2020 in CP [IB] No.199/7/HDB/2019.

For Petitioner : Mr.Ravi Kumar Paul  
Senior counsel for M/s.Paul&Paul  
For R1 : Mr.Rabu Manohar  
Senior Panel Counsel for the  
Central Government  
For R2 : Mr.B.Dhanraj  
For R4 : Mr.V.Suresh  
For R5 : Mr.V.Manohar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr.Rabu Manohar, learned Senior Panel Counsel accepts notice on behalf of the 1<sup>st</sup> respondent : Mr.B.Dhanraj, learned counsel accepts notice on behalf of the 2<sup>nd</sup> respondent ; Mr.V.Suresh, learned counsel accepts notice on behalf of the 4<sup>th</sup> respondent and Mr.V.Manohar, learned counsel accepts notice on behalf of the 5<sup>th</sup> respondent.
- (3) The petitioner-Corporation took a decision to construct the transmission lines from Salem [New] to Somanahalli and for the said purpose, the 2<sup>nd</sup> respondent, viz., Aster Private Limited, now represented by the Resolution Professional, was awarded two contracts for service and supply and pursuant to the said contracts, the 2<sup>nd</sup> respondent had provided several unconditional guarantees which had been issued by respondents 3 to 5, the details of which, have been given in paragraph No.5 of the affidavit filed in support of this writ petition. It is the case of the petitioner that in terms of the Terms and Conditions of the said contract, work is to be completed within 27 months, i.e., on 06.05.2014, and however, the work was completed only on 30.03.2019 and the delay in completion of the project has been solely attributable to the 2<sup>nd</sup> respondent and that apart, there were defects even on the completed work, which is yet to be rectified by the 2<sup>nd</sup> respondent. As a consequence, the petitioner-Corporation had awarded the work for defect rectification [civil] to another Agency at the risk and cost of the 2<sup>nd</sup> respondent. However, the

contract awarded for defect rectification [civil] have not been completed on account of onset and spread of COVID-19 pandemic virus. The 2<sup>nd</sup> respondent was also issued with two Award Letters on 02.12.2014 by the petitioner-Corporation for the construction of Dharmapuri Sub Station for which also, the 2<sup>nd</sup> respondent had provided two Bank Guarantees issued by the 4<sup>th</sup> respondent-bank dated 17.05.2020 and here again, there was a delay in completion of the project which is solely attributable to the 2<sup>nd</sup> respondent. It is also pointed out that the Corporate Insolvency Resolution Proceeding [CIRP] had been commenced against the 2<sup>nd</sup> respondent and an order of Moratorium u/s.14 of the Insolvency and Bankruptcy Code came to be passed on 19.11.2019 by the National Company Law Tribunal, Hyderabad [in short 'NCLT, Hyderabad'] and originally, an interim Resolution Professional was appointed and was confirmed as the Resolution Professional by the Committee of Creditors and the same was also approved by NCLT, Hyderabad. It is the specific case of the petitioner that though the Committee had sent an E-Mail on 01.06.2020 for encashment and the retention of the Bank Guarantee. The 3<sup>rd</sup> respondent sent an E-Mail dated 02.06.2020 to the 2<sup>nd</sup> respondent asking for some information regarding the underlying contract pursuant to which the retention of Bank Guarantee has been issued. It is pointed out that in terms of the Bank Guarantee and as per law, they were under mandate to have enhanced Bank Guarantee upon the request received from the petitioner - Corporation vide communication dated 01.06.2020 without any further enquiry and as such, it is not open to them to seek clarification in the form of E-Mail dated 02.06.2020 addressed to the 2<sup>nd</sup> respondent.

- (4) The 2<sup>nd</sup> respondent represented by the Resolution Professional, filed an Interlocutory Application in IA.No.337/2020 in CP [IB] No.199/7/HDB/2019 before NCLT, Hyderabad, praying for an order of injunction against the appellant/Power Grid Corporation of India, from encashing the Bank Guarantee and an interim order came to be passed and the petitioner herein also entered appearance and filed their counter. During the pendency of the application, NCLT, Hyderabad also directed the 2<sup>nd</sup> respondent to extend the Bank Guarantee which are about to expire and such kind of orders came to be passed on 13.07.2020, 28.07.2020, 03.08.2020 ; 29.09.2020 and 23.10.2020 respectively and vide order dated 23.10.2020, the Bank Guarantees were finally extended upto 31.03.2021. In the interregnum, NCLT, Hyderabad had reserved orders in the said Interlocutory Application filed by the 2<sup>nd</sup> respondent and vide final orders dated 24.03.2021, has restrained the 2<sup>nd</sup> respondent from invoking the Bank Guarantees enclosed in the Relief clause [a] of page no.19 of the Interlocutory

Application. The petitioner - Corporation aggrieved by the said order, filed an appeal before the 1<sup>st</sup> respondent, viz., the National Company Law Appellate Tribunal, at Chennai [in short, 'NCLAT at Chennai'] and also sought for interim relief to stay the operation of the impugned order with a further direction, directing the respondents to keep the Bank Guarantees alive during the pendency of the appeal.

- (5) Mr.Ravi Kumar Paul, learned Senior counsel appearing for M/s.Paul and Paul, learned counsel for the petitioner would submit that the appeal is dated 23.06.2020 and it has been filed before the NCLAT at Chennai which has been received and acknowledged and on account of the fact that NCLAT is not functioning on 29.03.2021 and 30.03.2021, due to Holi holidays and it will be reopening on 31.03.2021 [tomorrow], it is not possible for the NCLAT to take up the appeal, especially, the application for interim relief and prays for extension of the Bank Guarantees till NCLAT at Chennai, takes up the appeal on file and hear the Interlocutory Application praying for interim relief.
- (6) Mr.Rabu Manohar, learned Senior Panel Counsel appearing for the 1<sup>st</sup> respondent would pray for short accommodation to get instructions as to the entertainment of the said appeal, if the papers are otherwise in order.
- (7) Mr.B.Dhanraj, learned counsel appearing for the 2<sup>nd</sup> respondent would submit that NCLT at Hyderabad in the detailed order, had rightly reached the conclusion to pass an order of restraint, restraining the petitioner herein from invoking the Bank Guarantees and as such, the appeal itself may not have any merits and prays for dismissal of this writ petition.
- (8) The Court heard the submissions of Mr.V.Suresh, learned counsel appearing for the 4<sup>th</sup> respondent and Mr.V.Manohar, learned counsel appearing for the 5<sup>th</sup> respondent and also perused the materials placed before it.
- (9) The petitioner, in paragraph No.11 of the affidavit filed in support of the present writ petition made the following averments:-

''11.During the pendency of the above application, the Hon'ble NCLT, Hyderabad had directed the 2<sup>nd</sup> respondent to extend the Bank Guarantees which are about to expire and such orders were passed on 13.07.2020, 28.07.2020, 29.09.2020 and 23.10.2020....''

- (10) In paragraph No.14 of the affidavit, the details of the Bank Guarantees which are having validity till 31.03.2021 has been given and it is relevant to extract the same:-  
''14.The Bank Guarantees which are having the validity till 31.03.2021 are as follows:-

| BG                  | Purpose | Value             | Date of issue  | Expiry date | Claim date |
|---------------------|---------|-------------------|----------------|-------------|------------|
| 163401000001<br>04  | PBG     | 3,85,47,67<br>3/- | 23.02.201<br>2 | 31.03.2021  | 31.03.2021 |
| 2273ILG01601<br>3   | RTBG    | 7,05,73,93<br>2/- | 28.08.201<br>3 | 31.03.2021  | 31.03.2022 |
| 120133IBGP00<br>075 | PBG     | 7,96,86,13<br>6/- | 25.02.201<br>2 | 24.03.2021  | 24.03.2022 |

- (11) Admittedly, pendency of IA.No.337/2020 in CP [IB] No.199/7/HDB/2019 at the instance of the 2<sup>nd</sup> respondent, series of orders came to be passed by NCLT, at Hyderabad for extending the Bank Guarantees.
- (12) In the light of the plea taken by the petitioner in paragraph No.12 of the affidavit filed in support of this writ petition, in respect of which, there is no serious dispute on the part of the 2<sup>nd</sup> respondent and in the light of the above facts and circumstances, this Court is of the considered view that the two Bank Guarantees which are expiring on 31.03.2021 and the yet another Bank Guarantee which expired on 24.03.2021 - the date on which the final orders were passed by the adjudicating authority in IA.No.337/2020, are extended for a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website and it is without prejudice to the rights and contentions of the petitioner as well as the contesting respondent, viz., the 2<sup>nd</sup> respondent.
- (13) The 1<sup>st</sup> respondent / NCLAT at Chennai, is requested to entertain the appeal filed by the 2<sup>nd</sup> respondent, if the papers are otherwise in order and take up the application for interim relief after putting on notice, the concerned parties and give a disposal of the same as expeditiously as possible.
- (14) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The National Company Law Appellate Tribunal  
[NCLAT], Chennai Bench, 6<sup>th</sup> Floor  
Ezhilagam Annex Building, Chepauk  
Chennai 600 005.

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+1 cc to M/s.B.Dhanaraj, Advocate, SR.NO.20761  
+1 cc to M/s.Paul & Paul, Advocate, SR.NO.20796  
+1 cc to M/s.B.Rabumanohar, Advocate, SR.NO.20912

WP.No.8375/2021  
& WMP.No.8931/2021

PMK (CO)  
NS (10/05/2021)