

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2021

Coram

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No. 18558 of 2020

M/s.Dharani Geotech Engineers,
Rep. by its Managing Partner K.Jayavel,
Old No.H2, New No.22, TNHB Colony,
Kokkarayanpettai Road,
Valaraigate, Animoor Post,
Tiruchengode - 637 214. .. Petitioner

vs.

- 1.The Indian Overseas Bank
Rep. by its Chief Manager,
Tiruchengode Branch,
No.56-57, Teppakulam Street,
Shankari Road,
Tiruchengode - 637 211,
Namakkal, Tamil Nadu.
- 2.The Indian Overseas Bank,
Regional Office,
Rep. by its Chief Regional Manager,
7/54, Second Floor,
Ideal Garden Complex, Junction Road,
Near 5 Roads, Salem - 636 004.
- 3.M/s.UP Jal Nigam Limited
Rep. by its Executive Engineer(Construction),
Sewerage Pipeline Work at Ballia
Uttar Pradesh,
(Uttar Pradesh Government Undertaking).
- 4.M/s.Jyoti Build Tech Pvt Ltd.,
Rep. by Managing Director,
No 68/5339, Rengarpura,
Karolbagh,
New Delhi - 110 005.
- 5.Ultra Bond Structural System Pvt Ltd.,
Rep. by its Managing Director,
No.11, H Block, 2nd Floor,
Sterling Little Flower Apartment,
Guduvanchery, Chengalpet - 603 202. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to forthwith release and return the deposit of Rs.50 lakhs vide Receipt No.2014/NDRP 0997465 dated 14.08.2018 along with accrued interest, made by the Petitioner as margin money in respect of the Bank Guarantee bearing No.055971118000024 dated 13/08/2018 for a value of Rs.49,38,100/- issued in favour of the third respondent herein by treating the said Bank Guarantee cancelled as per their letter dated 18.08.2020 and 17.09.2020, without insisting on return of original Bank Guarantee from the third respondent.

For Petitioner : Mr.J.Ravikumar
For Respondents : Ms.Ananda Gomathy
for R1 and R2

ORDER

This writ petition has been filed for a mandamus seeking for a direction to the first respondent to forthwith release and return the deposit of Rs.50 lakhs vide Receipt No.2014/NDRP 0997465 dated 14.08.2018 along with accrued interest, made by the Petitioner as margin money in respect of the Bank Guarantee bearing No.055971118000024 dated 13.08.2018 for a value of Rs.49,38,100/- issued in favour of the third respondent herein by treating the said Bank Guarantee as cancelled as per their letter dated 18.08.2020 and 17.09.2020, without insisting on return of original Bank Guarantee from the third respondent.

2.It is the case of the petitioner that they had obtained bank guarantee from the first respondent bank on 13.08.2018 for a sum of Rs.49,38,100/- in respect of the contract they had entered into with the third respondent. According to the terms of contract, the petitioner had agreed to furnish the bank guarantee in favour of the third respondent. According to the petitioner, the bank guarantee issued by the first respondent got expired on 12.08.2019 and further, there is no claim as against the petitioner by the third respondent. Hence, according to them, the first respondent bank will have to refund the sum of Rs.50 lakhs deposited by the petitioner with the first respondent bank on 12.08.2018 as margin money for the bank guarantee dated 13.08.2018. The petitioner has given a representation to the first respondent for refund of the sum of Rs.50 lakhs. Since the representation has not been considered, this writ petition has been filed.

3.Heard Mr.J.Ravikumar, learned counsel for the petitioner and Ms.Ananda Gomathy, learned counsel for respondents 1 and 2.

4.Learned counsel for the petitioner drew the attention of this Court to the letters dated 18.08.2020 and 17.09.2020 issued by the first respondent bank and would submit that in both the letters, the first respondent bank has admitted that the bank guarantee has expired on 12.08.2019 and the claim period for the third respondent to make any claim under the bank guarantee also got expired on 12.08.2020. Therefore, according to him, without any basis, the first respondent bank has not refunded the sum of Rs.50 lakhs paid by the petitioner on 14.08.2018 as margin money for the bank guarantee dated 13.08.2018.

5.Learned counsel for the bank/respondents 1 and 2, on instructions, would submit that as a procedure adopted by the bank, the original bank guarantee will have to be surrendered to the bank and only thereafter, the bank will be in a position to refund the sum of Rs.50 lakhs to the petitioner. According to her, since the third respondent has not surrendered the original bank guarantee to the first respondent bank, the first respondent bank has not refunded the money to the petitioner.

6.Admittedly, the bank guarantee has got expired on 12.08.2019 and the claim period under the bank guarantee has also got expired on 12.08.2020. The letters of the first respondent bank referred to supra clearly indicate that the bank guarantee has got expired and the claim period also got expired on the dates mentioned supra. The third respondent is a Government organisation. As seen from the documents filed in support of the writ petition, the petitioner has also made several representations to the third respondent to return the original bank guarantee. Despite those representations, the third respondent has not returned the original bank guarantee till date. No prejudice will be caused to the third respondent if a direction is issued by this Court to the first respondent to refund the sum of Rs.50 lakhs paid by the petitioner as margin money for the subject bank guarantee on 13.08.2018, as admittedly the bank guarantee has got expired and the claim period has also got expired.

7.For the foregoing reasons, this Court directs the first respondent to release and return the deposit of Rs.50 lakhs vide Receipt No.2014/NDRP 0997465 dated 14.08.2018 to the petitioner along with accrued interest, if any, after adjustment of first

respondent bank's charges, if any, to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

8. With the aforesaid direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Manager,
The Indian Overseas Bank
Tiruchengode Branch,
No.56-57, Teppakulam Street,
Shankari Road,
Tiruchengode - 637 211,
Namakkal, Tamil Nadu.
2. The Chief Regional Manager,
The Indian Overseas Bank,
Regional Office,
7/54, Second Floor,
Ideal Garden Complex, Junction Road,
Near 5 Roads, Salem - 636 004.

+1cc to Mr.Ravi kumar, Advocate SR.No. 17288

+1cc to Mr.Ananda Gomathi, Advocate SR.No. 17397

W.P.No. 18558 of 2020

A.SK(22.03.2021)

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