

BDP-SPS-TAC

BHARAT
DASHARATH
PANDITDigitally signed
by BHARAT
DASHARATH
PANDIT
Date:
2022.04.21
13:17:25 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7423 OF 2021**

M/s Tapi Prestressed Products Ltd. Petitioner.
V/s.
M/s. K.K.M.R. Engineers and
Contractors Partnership Firm through
its Partner Shri Mukesh Raje Respondent.

Mr. Rahul Kalangiware i/b Anish Khanekar for the Petitioner.
Mr. Umesh Nigam @ Shashipal Shankar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 18, 2022

PC.:-

- 1] Heard.

- 2] Impugned in the Petition is an order dated 15/09/2021 passed by Ad-hoc District Judge-5 in Darkhast Proceedings No.90 of 2019. Application-Exhibit-36 was preferred by a decree holder i.e. Respondent, objecting Bank Guarantee furnished by judgment debtor/ Petitioner claiming that same is not in compliance of the order by which execution was ordered to be stayed. Respondent/decreed holder sought liberty to proceed ahead with execution of arbitration award.

- 3] It appears that under Section 36, an order was passed by District Judge, Indore, staying the execution of arbitration award subject to furnishing Bank Guarantee for an amount of Rs 34 lakhs within 15

days from the date of the order i.e. 30th July, 2019. I am informed that said period was subsequently extended up to 5th September, 2019, the date on which Petitioner furnished photocopy of the Bank Guarantee. Original Bank Guarantee was tendered in execution proceedings on 7th September, 2019. As the Bank Guarantee should have been for an amount of Rs 34 lakhs, Petitioner tendered additional Bank Guarantee of an amount of Rs 43,695/-, which was issued on 28th October, 2020. It appears that since the Bank Guarantee was not furnished as was directed by District Judge, Indore, aforesaid Application-Exhibit-36 was taken out by Respondent/decreed holder which is allowed by the learned district Judge.

4] What is brought to my notice is, the Bank Guarantee furnished for an amount of Rs 33 lakhs and odd was within the period stipulated and such Bank Guarantee is valid till September 04, 2022. In fact, the said Bank Guarantee was short by Rs 43000/- and odd amount and as such additional Bank Guarantee was also permitted. According to Counsel for the Petitioner, intention of the Petitioner is to comply with the conditional stay order is quite apparent and that being so, Court below committed an error in granting liberty to the Respondent/decreed holder to proceed ahead with the execution proceedings.

5] While countering submissions, Counsel for the Respondents would urge that admittedly, Bank Guarantee, as was directed, was not

furnished within time. Apart from above, it is pointed out that Bank Guarantee furnished was not within the stipulated time as the Bank Guarantee of Rs 43,000/- and odd amount was furnished at much belated stage. Apart from above, from the recitals of the Bank Guarantee, it is sought to be canvassed that the Bank Guarantee is conditional. As such, according to him, since conditions as were incorporated in the order of grant of stay passed by the District Judge, Indore were not complied with, Executing Court was justified in permitting Respondent to proceed ahead with the execution against the Petitioner.

6] Considered rival submissions.

7] Compliance of order of furnishing of Bank Guarantee of an amount of Rs 34 lakhs as on date is not in dispute. However, what has been disputed is furnishing of Bank Guarantee within the time stipulated. Fact remains that initially Petitioner was granted time to furnish the Bank Guarantee till September 05, 2019 within which period Bank Guarantee for an amount of Rs 33,56,305/- was furnished which was short of Rs 43,000/- and odd. Said shortfall was also covered by furnishing additional Bank Guarantee. Both these Bank Guarantees are valid till this date.

8] Though it is claimed by the Counsel for Respondent that the Bank Guarantees which are furnished are conditional, however I hardly see any such recital in the Bank Guarantees particularly when a

specific recital therein provides that on demand Bank is bound to grant encashment. As such, it can be inferred that neither the Bank Guarantees furnished are conditional nor invalid as the same are already validated by extending period of Bank Guarantees.

9] In the aforesaid backdrop, particularly having regard to the undertaking furnished during the course of argument by the Counsel for the Petitioner that both the Bank Guarantees are unconditional and are valid and shall be continued to be validated till decision of the Application under Section 34 of the Arbitration and Conciliation Act, in my opinion, order impugned warrants interference.

10] In that view of the matter, order impugned passed below Exhibit-36 dated 15/09/2021 is hereby quashed and set aside. The Executing Court is permitted to take on record Bank Guarantees as referred to above and execution shall remain stayed till disposal of Application under Section 34 of the Arbitration and Conciliation Act preferred by the Petitioner.

11] In case if violation of this order or order granting stay by the Court at Indore is noticed, it shall be open for the Respondent to take out similar proceeding like the present one.

12] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)