

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16624-2020

Date of decision: 27.09.2022

M/s Kanti Bijlee Utpadan Nigam Ltd. (KBUNL)

.....Petitioner

Versus

Punjab and Sindh Bank and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vikas P. Singh, Advocate,
for the petitioner.

Mr. Deepinder Singh, Advocate,
for respondent No.1.

Mr. P.S. Rana, Advocate,
for respondent No.2.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This petition has been filed by the petitioner, praying for the following reliefs:

“I. Issue of a writ in the nature of certiorari to quash and set aside the letter dated 12.02.2020 (Annexure P-9) vide which the claim of the petitioner for encashment of the Bank Guarantee has been rejected by the respondent No.1; And

II. Further issue of a writ in the nature of mandamus directing the respondent No.1 to encash the Bank Guarantee No.0372-BG0026-14 dated 13.11.2014 (extended from time to time) for a sum of Rs. 2,37,14,150/- along interest; And,

III. Issue such other appropriate writ, order or direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the instantt case.

IV. Exempt the petitioner from filing the certified/typed copies of Annexures.

V. Dispense with the prior services of the notice upon the respondents.

VI. Award the cost of the writ petition to the petitioner”

Learned counsel for the petitioner submits that respondent No.2, upon being awarded a contract by the petitioner-Company, had furnished a bank guarantee through respondent No.1-Bank. However, when the petitioner sought to encash the said bank guarantee, the same was not honoured, and, in the meantime, the Arbitral Tribunal, vide order dated 16.08.2019, had restrained the petitioner from encashing the bank guarantee. Being aggrieved by the said order, the petitioner had approached the High Court of Delhi, vide ARB. A.(COMM.)24/2019, which was allowed, and the order passed by the Arbitral Tribunal was set aside. It is urged that the bank guarantee is a separate and distinct contract, which can be enforced any time, and therefore, respondent No.1 was obliged to honour the bank guarantee, permitting the petitioner to encash the same. However, the stand taken by respondent No.1-bank was that the bank guarantee stood expired on 09.11.2019. Thereafter, respondent No.2 approached the bank for renewal/extension of the same on 14.11.2019, pursuant to the directions of the Arbitral Tribunal, but the said request was not acceded to, as the bank guarantee had already expired. He submits that in this backdrop, directions be issued to respondent No.1-bank to permit the petitioner to encash the bank guarantee.

We have heard learned counsel for the parties at length and perused the records.

From a bare perusal of the records and the return filed by respondent No.2, it is evident that exactly the same issue that has been raised by the petitioner in these proceedings, was also raised by it, as

counter claim No.1, before the Arbitral Tribunal. However, upon due analysis, the Tribunal had rejected the said claim, vide order dated 26.08.2021. It would be apposite to point out that respondent No.1 was neither made party in the arbitral proceedings, nor in the case filed before the High Court of Delhi. Further, it was informed that both the parties, i.e. petitioner and respondent No.2, have taken up proceedings against the award passed by the Arbitral Tribunal, which are pending before the High Court of Delhi. Thus, it is evident that the issue raised by the petitioner in the present petition had already been decided by the Arbitral Tribunal, which is now pending adjudication before the appropriate forum.

In such circumstances, we do not find any reason to entertain this petition, and the same is accordingly dismissed. However, the petitioner would be at liberty to take up the issues before appropriate forum.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

September 27, 2022
Ak Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No