

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 01.03.2023
Pronounced on: 24.03.2023

FMA 1309 of 2022
With
CAN 1 of 2022

Power Grid Corporation of India Limited

...Appellant

-Vs-

EMC Limited and Ors.

...Respondents

Present:-

Mr. S. N. Mookherjee, AG
Mr. Anirban Ray, GP
Mr. Aritra Basu,
Mr. Debabrata Das,
Mr. Saptarshi Mukherjee,
Mr. Tirthankar Nandi, Advocates
... for the appellants

Mr. Joy Saha, Sr. Adv.
Mr. Deepan Sarkar,
Mr. Pratik Mukhopadhyaya, Advocates
... for the respondent Nos. 1 and 2

Mr. Anirban Pramanick,
Ms. Subhasree Dey, Advocates
... for the respondent No. 4

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This intra-court appeal is at the instance of the Power Grid Corporation of India Limited (respondent in the writ petition) challenging the interlocutory order of the learned Single Judge dated 10.08.2022 passed in WPA 14603 of 2022 restraining the appellant from invoking the bank guarantee of the first petitioner or from realising

any amount in pursuance to the bank guarantee furnished by the petitioner No. 1.

2. The petitioners (respondents in this appeal) have approached the writ court with the plea that the petitioner company had entered into 8 contracts with the appellant relating to supply and erection in relation to construction of power transmission lines of an advanced nature. The petitioner had furnished the performance guarantee. The grievances of the petitioner in the writ petition is that though the work was completed and thereafter 425 days had lapsed, but instead of returning the bank guarantee, appellant had invoked the same.

3. Learned Single Judge by the impugned order had stayed the invocation of the bank guarantee by recording that the special equities exist for passing an appropriate order of restraint against the invocation of the bank guarantees. The special equities noted by the learned Single Judge are the orders passed by the NCLT and the fact that the petitioner No. 1 had entered into the CIRP, the project was completed before the invocation of the bank guarantee, there was no documented default on the part of the petitioners, no evidence of the petitioners failing to perform the contract, the delay was waived by the appellant by entering into a tripartite agreement and the moratorium provided under 14 of the Insolvency and Bankruptcy Code, 2016.

4. Though in this appeal lengthy arguments have been advanced, we need not go into merit of the matter because undisputedly the bank guarantee was encashed on 08.07.2022 and the amount was transferred to the appellant on that date whereas the impugned order was passed by the learned Single Judge subsequently on 10th of August, 2022. The fact of encashment of the bank guarantee was not brought to the notice of

the learned Single Judge. On account of the above, the impugned direction of the learned Single Judge does not survive. It has been pointed out that the writ petitioner has filed CAN 1 of 2022 in the pending WPA 14603 of 2022 seeking a direction to the appellant to forthwith transfer the amount realised by the appellant from the respondent No. 3. That apart, writ petition is already pending and all the issues raised therein will be decided on merit by the learned Single Judge. It has been pointed out that so far no affidavits have been exchanged in the pending writ petition.

5. Having regard to the nature of controversy involved in the matter, we are of the opinion that the writ petition itself is required to be decided expeditiously. Hence, we permit the appellant to file affidavit in opposition in the pending writ petition within two weeks from today, thereafter affidavit in reply, if any, be filed within ten days. The conclusions drawn by the learned Single Judge in the impugned order were for the purpose of deciding the prayer for interim relief and before exchange of affidavits, therefore, they are held to be tentative in nature. Hence, the writ petition will be decided on its own merit without being influenced by the same. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
24.03.2023

PA(SS)

(A.F.R. / N.A.F.R.)