BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3728 of 2023
and
W.M.P(MD)No.3512 of 2023

Sri Vetrivel Traders,
Represented by its Prop.M.R.Karkuvel,
113 A, Avalappasamy Koil Street,
Kattaiyapuram,
Virudhunagar – 626 001. ... Petitioner

Vs

1.The Chief Branch Manager,
SME Branch, State Bank of India,
Virudhunagar – 626 001.

2.OFB Tech Private Limited,
Shop No.G-22 C (UGF) D-1 (K-84),
Green Park Main, New Delhi,
South Delhi – 110 016.

3.M.S.Harish ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent dated 21.11.2022 as illegal, and not in accordance with law and consequently direct the first respondent to re-invoke the bank guarantee amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) from the second respondent to the petitioner.

For Petitioner : Mr.J.Arul Prakash

For Respondents : Mr.J.Alaguram Jothi
Standing Counsel of R.1

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the first respondent Bank.

2.The petitioner wants this Court to restrain the first respondent from invoking the petition mentioned Bank guarantee. The law regarding invocation of Bank guarantee is fairly well settled. The Hon'ble Supreme Court in *Himadri Chemicals Industries Ltd.* v. *Coal Tar Refining Co.*, (2007) 8 SCC 110 laid down the following principles for grant of or refusal to grant injunction to restrain enforcement of a Bank Guarantee or a letter of credit:

> "(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a Bank Guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.
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> (ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.
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> (iii) The courts should be slow in granting an order of injunction to restrain the realisation of a Bank Guarantee or a letter of credit.

(iv) Since a Bank Guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or letters of credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned."

3.In the case on hand, there appears to be a contractual dispute between the parties. The petitioner has to necessarily move the jurisdictional civil Court. If there is any arbitral remedy, the same can also be invoked. Article 226 of the Constitution of India is not available in such cases. Granting liberty to the petitioner to avail appropriate remedy, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

G.R.SWAMINATHAN, J.

MGA

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