* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd November, 2023

IN THE MATTER OF:

\+ **W.P.(C) 7271/2022**

FTA HSRP SOLUTIONS PVT. LTD. ..... Petitioner

Through: Mr. Anubhav Chowdhury, Sr. Advocate with Mr. Malak Bhatt, Ms. Neeha Nagpal, Mr. Vaibhav Tomar and Ms. Ananya Kanoria, Advocates.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. B. B. Sawhney, Senior Advocate with Mr. Vipin Jai and Mr. Ujjwal, Advocates.
Mr. Manish Mohan, CGSC with Ms. Rupali Kapoor, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. *Vide* the present Writ Petition the Petitioner prays for a writ/order/direction to the Respondents to release the Bank Guarantee bearing No.00070025516 for an amount of Rs. 50 lakhs deposited by the Petitioner with the Respondent Bank as margin for securing the Bank Guarantee which had been given by the Petitioner to M/s Hindalco Industries Ltd.

2. It is stated that a Bank Guarantee amounting to Rs. 50 Lakhs was issued by Punjab National Bank in favour of M/s Hindalco Industries Limited on request of the Petitioner. It is stated that the Bank Guarantee

expired on 04.08.2018 and a No Dues Certificate has also been issued to the Petitioner. However, even after the expiry of the bank guarantee, no action was taken by the Respondent Bank to release the said Bank Guarantee or the refund of the margin money deposited by the Petitioner with the Bank in the form of an FDR. Since the margin money has not been released, the Petitioner has approached this Court by filing the present Writ Petition.

3. The matter came up for hearing on 11.05.2022 and the learned Counsel for the Respondent No.1 was asked to take instructions. A counter affidavit has been filed by the Respondent No.1.

4. In the Counter affidavit it has been stated that the Petitioner herein has availed credit facilities for the Bank Guarantees which had been closed post issuance of NOC. It is stated that a company by the name M/s Frost International Ltd had availed credit facilities which was declared as a fraud account and an FIR, being RCBD1/2020/E/000l, has been filed with the CBI by the lead Bank of the consortium, i.e. Bank of India, on 19.01.2020. It is stated that some of the Directors in the Petitioner Company and M/s Frost International Ltd. are common. It is stated that the Respondent Bank has advised the Petitioner that their request to refund the excess amount, if any, can be considered only after the Group accounts of M/s Frost International Ltd. are regularized. In the supplementary counter affidavit it is stated that as on date two Bank Guarantees of Rs.50 lakhs each are outstanding in the books of the Bank.

5. Heard the Counsels and perused the material on record.

6. It is stated by the learned Counsel for the Petitioner that M/s Frost International has exited from the shareholding of the Petitioner company. He further states that the Respondent Bank vide a letter dated 10.02.2021has

stated that the interest accrued on FDRs cannot be released till closure of the Bank Guarantees. He states that the Bank Guarantee given to M/s Hindalco Industries Ltd. was backed by 100% FDR margin and the Bank Guarantee has already expired on 04.08.2018 and despite expiry of the Bank Guarantee, the margin money pertaining to the same is not being released by the Bank. He states that at present the amount lying with the Bank exceeds the amount of bank guarantees and therefore, there is no reason not to release the excess amount.

7. A perusal of the material on record discloses that there is no criminal case pending against the Petitioner. The fact that the Petitioner company was a part of the Frost Group and there are allegations of fraud against M/s Frost International Ltd. does not give any right to the Bank to withhold the money that is due and payable to the Petitioner herein. If the authorities are of the view that the money lying with the Bank is tainted and has to be secured then the Police Officers have got the power under Section 102 Cr.P.C. to seize the same. Without any allegation of fraud etc. on the Petitioner, the Bank cannot refuse to return the money which belongs to the Petitioner. In the absence of any material, the action of the Respondent/Bank in refusing to return the amount of Rs.50 lakhs, which was given by the Petitioner as margin money to secure a Bank Guarantee, cannot be sustained. Material on record shows that the Petitioner has FDRs of 7.7 crores to cover up the Bank Guarantees of Rs.5.5 crores. Since the money in FDRs exceeds the amount to be secured by the Bank Guarantee, there cannot be any impediment on the Bank in returning a sum of Rs.50 Lakhs to the Petitioner.

8. Accordingly, in view of the fact that the amount of FDRs exceeds the amount secured by the Petitioner in the form of Bank Guarantees and also in

view of the fact that the Bank Guarantee given by the Bank to M/s Hindalco Industries Ltd. has already expired, Respondent/Bank is directed to release a sum of Rs.50 Lakhs in favour of the Petitioner.

9. With these directions, the Writ Petition is disposed of. Pending applications, if any, also stands is disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 02, 2023
Rahul