

23rd December,
2024
(AK)
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F.M.A.T 472 of 2024
IA No: CAN 1 of 2024

Steelex Electrocast Private Limited
Vs.
Damodar Valley Corporation and another

Mr. Naresh Balodia
Mr. Anirban Roy
...for the appellant/plaintiff.

Mr. Probal Mukherjee
Mr. Rajarshi Datta
Mr. Deepak Agarwal
...for the DVC.

1. FMAT 472 of 2024 is taken up for admission hearing.
2. Learned counsel for the appellant/plaintiff contends that the appellant has been regularly paying electricity charges to the respondent no.1- Damodar Valley Corporation (DVC).
3. Of late, due to a lull in the business of the appellant, the electricity consumption was reduced.
4. The electricity connection was accordingly disconnected for non-payment of dues.
5. Learned counsel for the appellant submits that the appellant is willing to surrender the electricity and to pay the dues.

6. However, since the DVC is threatening to invoke the bank guarantee which was given in lieu of the coming three months' minimum assured electricity charges, the said bank guarantee ought not to be invoked.
7. Learned senior counsel appearing for the respondents submits that in terms of an order passed by the Supreme Court on October 24, 2024 in connection with Special Leave Petition bearing Diary No. 48209 of 2024 preferred by the appellant, the appellant had been directed to deposit 50% of an amount of Rs.6,82,45,973/- in lieu of arrears of payment of electricity charges.
8. Learned senior counsel places reliance on Clause 4.2.7 of West Bengal Electricity Regulatory Commission Notification No.52/WBERC dated April 2, 2013 where it is provided that the distribution licensee may, at any time, appropriate such deposit in whole or in part in satisfaction of any sum legally due or owing by the consumer to the licensee, whether the supply of electric energy to the consumer continues or has ceased, without prejudice to any other remedy to which the licensee may be entitled for recovery of such sum due or

owed by the consumer under any other provisions of the Act (Electricity Act) or any other law.

9. Upon hearing learned counsel for the parties, we find that in terms of Clause 4.2.7, the respondent no.1-DVC is well within its rights to appropriate the amount covered by the bank guarantee-in-question in lieu of arrears as well, although initially the same was furnished for the purpose of securing future payments.
10. That apart, a bank guarantee is an independent contract between the bank and the executant of the bank guarantee and unless some palpable fraud or irregularity patent on the face of the record in the underlying contract is made out, courts are loathe to grant injunctions regarding invocation of bank guarantees.
11. Such a high case having not been made out by the appellant here, we are not inclined to interfere with the impugned order, whereby ad interim injunction to that effect was refused to the appellant.
12. Accordingly, FMAT 472 of 2024 is dismissed under Order XLI Rule 11, read with Order XLIII, of the Code of Civil Procedure,
13. Consequentially, CAN 1 of 2024 is also disposed of.

14. It is, however, expected that the learned Trial Judge shall expedite the hearing of the main injunction application and thereafter the suit from which the present appeal arises.
15. It is further clarified that none of the above observations shall be prejudicial to the rights and contentions of the parties in the court below at any stage of the suit or the injunction application and the above findings are tentative, arrived at only for the purpose of the disposal of the present appeal.
16. There will be no order as to costs.
17. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)