



W.P.No.12456 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12456 of 2023

and

W.M.P.Nos.12284 & 31046 of 2023

M/s.GVR Infra Projects Ltd.,
Having Registered Office at
Plot No.46A,
First Avenue Mail Road,
Vettuvankeni, Injambakkam Village,
Sholinganallur Taluk,
Chennai-600 115.

... Petitioner

Vs.

1. Union of India,
Ministry of External Affairs,
South Block, New Delhi-110 001.

2. Bank of Baroda (Erstwhile Vijaya Bank),
No.168, 1st Floor, Express Estate,
Mount Road, Anna Salai,
Chennai, Tamil Nadu-600 002.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Certiorarified Mandamus, to call for the



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records of the respondent No.2 Bank relating to the impugned communication dated 18.07.2022 as well as the consequential letters dated 30.11.2022 and 04.01.2023 sent by the respondent No.2 Bank to the Petitioner, to quash the same and to consequentially direct the respondent No.2 Bank to renew the Bank Guarantees pending the arbitration proceedings.

For Petitioner : Mr.Om.Prakash, Senior Counsel for
Ms.R.Moneshaa

For Respondents : Mr.K.Subbu Ranga Bharathi,
Central Government Standing Counsel,
(for R1);

: Mr.M.L.Ganesh (for R2).

ORDER

The final notice issued by the Assistant General Manager dated 18.07.2022 and the consequential letters dated 30.11.2022 and 04.01.2023, sent by the second respondent Bank is sought to be quashed in the present writ proceedings.

2. The Government of India had entered into a Memorandum of Understanding dated 15.01.2010 with the Government of Nepal for



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strengthening of road infrastructure in Terai area of Nepal. The petitioner participated in the tender and was a successful bidder, and signed a Letter of Acceptance dated 09.08.2011, issued by the first respondent Ministry of External Affairs.

3. It is not in dispute that a contract agreement has been entered into between the parties. Regarding the Bank guarantee, it is brought to the notice of this Court that the revised resolution plan stipulates a condition that "The Resolution Applicant further prays that all new inquiries investigations, notices, suits, disputes, litigation, arbitration or other judicial, regulatory, or administrative proceedings will not be initiated or admitted, if these relate to any period prior to the effective date or on account of the Resolution Applicant acquiring control over the Corporate Debtor pursuant to this Resolution Plan, against the Corporate Debtor"

4. Further it is brought to the notice of this Court that the Bank guarantee for mobilisation advance stipulates as follows:

“Notwithstanding anything contained herein above:

(a) Our liability under this Bank Guarantee shall not exceed Rs.2,66,32,031/- (Rupees Two Crores Sixty Six Lakhs Thirty Two Thousand Thirty One Only).

(b) This Bank Guarantee shall be valid only up to



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19/03/2014.

(c)We are liable to pay the guaranteed amount or any part there of under this Bank Guarantee only if you serve upon us a written claim or demand on or before 19/03/2014.”

5. The disputed issues are contractual in nature. The learned senior counsel appearing on behalf of the petitioner made a submission that the arbitral proceedings are pending with the first respondent which is yet to be concluded. It is further contended that from the year 2014 onwards, the Bank guarantee is continuously renewed. Therefore, the clause relied on by the second respondent under the revised resolution plan cannot be a bar for granting the relief. Since the arbitral proceedings are pending before the first respondent and is in progress, the said proceedings are to be concluded as expeditiously as possible in order to give quietus to the issues between the parties.

6. As far as the present writ proceedings are concerned, disputed facts relating to contractual obligations cannot be adjudicated. Thus, the petitioner is at liberty to pursue the arbitral proceedings with the first respondent who in turn shall conclude the same without causing undue delay.



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7. With these observations, the writ petition stands disposed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes

Speaking Order

Neutral Citation : Yes

(sha)

To

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S.M.SUBRAMANIAM. J.,

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