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

+ **CS(COMM) 323/2022**

KKSPUN INDIA LTD Plaintiff
Through: Ms Meghna Mishra, Mr. Ankit
Rajgarhia & Mr. Rohit Kumar,
Advocates (M- 9818855771)

versus

OFB TECH PRIVATE LIMITED & ORS. Defendant
Through: Mr. Sanyam Khetarpal, Adv. for D-1
(M- 9873674225)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **26.02.2024**

1. This hearing has been done through hybrid mode.
2. The present is a suit filed by the Plaintiff-M/S KKSPUN India Ltd. *inter alia* seeking a permanent injunction restraining the invocation and encashment of 24 bank guarantees amounting to Rs. 41,21,57,263/-, which the Plaintiff claims, was provided by it to the Defendant No. 1 under 6 purchase orders. The details of the said Purchase Orders are as under:-



S. No.	Date	Purchase Order No.	Value
1.	14.10.2020	OFB/PO/B/20- 21/OCT/HR/650	113,59,05,190/-
2.	26.05.2021	OFB/PO/B/21- 22/MAY/HR821	17,09,16,746
3.	01.06.2021	OFB/PO/B/21- 22/JUNE	50,69,29,398
4.	11.06.2021	OFB/PO/B/21- 22/JUN/HR945	9,33,13,220

3. It is the case of the Plaintiff that, it had supplied goods against E-invoices and E-Way bills generated on time on the GST portal to Defendant No. 1 to the tune of Rs.81,86,32,711 /-. It is averred in the Plaint that, instead of adjusting the mobilization advance pro-rata against the goods supplied, Defendant No.1 sought to adjust the entire amount of the mobilization advance against the goods supplied by the Plaintiff to them. As a result, the Plaintiff was left with no advance amount despite having provided the Advance Bank Guarantee and having supplied goods worth Rs. 81,86,32,711/-

4. It is further averred in the Plaint that on 10th May, 2022 Defendant



No. 1 had issued Demand Letters to the Banks i.e. Defendant Nos. 2 to 6, fraudulently seeking to invoke the Advance Bank Guarantees and Performance Bank Guarantees. It is stated in the Plaint that Defendant No. 1, falsely claimed that the Plaintiff has failed to fulfil its commitments in accordance with the Purchase Orders.

5. *Vide* order dated 13th May, 2022, this Court granted an *ex parte ad interim* injunction restraining Defendants Nos 2, 3, 4 and 6 from releasing any amounts under the aforesaid bank guarantees as mentioned in Document 7 filed with the Plaint. This injunction was further upheld vide order dated 19th September, 2022.

6. An appeal was filed by the Appellant/Defendant herein in ***FAO(OS) (COMM) 296/2022***, challenging the order dated 19th September, 2022. *Vide* order dated 1st February, 2023, the Court held that the present case does not justify the stay of the encashment of bank guarantees and allowed the appeal.

7. Ld. Counsel for the Plaintiff submits that he has instructions to withdraw the present suit with liberty, as the matter relates to the bank guarantees qua which injunction has been refused by the Division Bench vide judgment dated 1st February, 2024 and the same is upheld till the Supreme Court in the SLP vide judgment dated 5th February, 2024.

8. Accordingly, the present suit is dismissed as withdrawn with liberty to the Plaintiff to avail of its remedies in accordance with law.

PRATHIBA M. SINGH, J.

FEBRUARY 26, 2024/dk/rks/bh