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

+ **FAO (COMM) 93/2024 CM APPL. 29905/2024**

TATA PROJECTS LTD.

..... Appellant

Through: Mr. Rajeev Nayar, Sr. Adv. with Mr.
Naveen Chawla & Ms. Surabhi Rana,
Advs.

Versus

POWER GRID CORPORATION OF INDIA LTD Respondent

Through: Mr. Jayant M. Mehta, Sr. Adv. with
Mr. Rishabh Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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27.05.2024

CAV 240/2024

1. The learned counsel for the caveator / respondent has appeared.
2. The caveat stands discharged.

CM Nos.29906/2024 & 29907/2024 (both for exemption)

3. Exemption is allowed, subject to all just exceptions.
4. The applications are disposed of.

CM No.29908/2024 (for leave to file long list of dates)

5. For the reasons stated in the application, the same is allowed.

FAO (COMM) 93/2024

6. The appellant has filed the present appeal under Section 37(1)(b) of the Arbitration & Conciliation Act, 1996 (hereafter *A&C Act*) impugning the judgment dated 09.05.2024 (hereafter *impugned judgment*) rejecting OMP(I)(COMM) No.188/2024 captioned *Tata Projects Limited v. Power Grid Corporation of India Limited*.
7. The appellant had filed the said petition under Section 9 of the A&C Act claiming interim measures of protection, *inter alia*, praying that the



respondent be restrained from invoking the bank guarantee (PBG201500052) dated 15.02.2015 amounting to ₹58,64,277/- pursuant to the letter dated 02.04.2024 issued by the respondent. The learned Commercial Court rejected the said petition faulting the appellant for approaching the Court with unclean hands. It is pointed out that prior to filing the petition under Section 9 of the A&C Act, the appellant had preferred a similar petition before the learned District Judge, Commercial Court, Saket, however, had withdrawn the same on 01.05.2024 [OMP(I)(COMM) No.742/2024]. The said order indicates that the appellant had at the outset, without going into the merits of the case, withdrawn the said petition on the ground that the same has been wrongly filed in South District, Saket Courts.

8. The learned Commercial Court found that the appellant had in a similar case moved another petition under Section 9 of the A&C Act and had obtained interim orders of protection in respect of another bank guarantee. Thus, in effect the appellant had enjoyed protective orders in one case but had withdrawn the other. The petitioner had not disclosed this fact in its petition and the learned Commercial Court faulted the petitioner for not doing so.

9. We find that the appellant has an explanation for withdrawing the petition filed before the learned District Judge, Commercial Court, South District. According to the appellant, the arbitration agreement specifically provided that the arbitration shall be held at New Delhi. The appellant has construed the same to mean that the District Judge, New Delhi District alone would have jurisdiction. Concededly, the said understanding is erroneous.

10. The petition under Section 9 of the A&C Act is required to be filed before a Court as defined under Section 2(1)(e) of the A&C Act. Since, all Courts in New Delhi would have jurisdiction by virtue of the seat of arbitration being at New Delhi, all Courts at New Delhi which conform to the



jurisdiction under Section 2(1) (e) of the A&C Act would have the jurisdiction to consider the petition under Section 9 of the A&C act.

11. Notwithstanding the same, we are of the view that non disclosure of the petition under Section 9 of the A&C Act in another matter cannot be termed as a case of egregious fraud, which would disentitle the appellant from pursuing its petition under Section 9 of the A&C Act.

12. It is noted that the learned Commercial Court has not addressed the issue on merits. It has merely stated in one sentence that the petitioner is not entitled to the relief on merits but has provided no reasons for the same.

13. Mr. Mehta, learned senior counsel appearing for the respondent submits that the law relating to unconditional bank guarantee is well settled and the same cannot be interdicted except on grounds of egregious fraud, special equities and irretrievable injustice.

14. We are refraining from expressing any view in this regard, as the impugned judgment does not reflect that the learned Commercial Court has examined the petition on merits.

15. In view of the above, we set aside the impugned judgment and remand the matter to the learned Commercial Court to consider afresh on merits.

16. List before the concerned Commercial Court on 30.05.2024.

17. It is clarified that all contentions of the parties are reserved.

18. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 27, 2024

‘gsr’

Click here to check corrigendum, if any