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

\+ FAO(OS) (COMM) 166/2023

SUZLON ENERGY LIMITED ..... Appellant

Through: Mr. Amann Gupta, Ms. Nishtha Jain & Mr. Akarsh Pandey, Advs.

Versus

INDIAN OIL CORPORATION LIMITED THROUGH ITS CHAIRMAN ..... Respondent

Through: Mr. Sakya S. Chaudhary, Ms. Astha Sharma & Mr. Karan Jaiswal, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% 13.03.2024

1. The appellant has filed the present appeal impugning an ad-interim order dated 26.07.2023 passed by the learned Single Judge in OMP(I)(COMM) No.149/2023 captioned *Suzlon Energy Limited. v. Indian Oil Corporation Limited.* The appellant had filed the said application under Section 9 of the Arbitration & Conciliation Act, 1996 (hereafter the *A&C Act*) seeking release of four Performance Bank Guarantees (hereafter *PBGs*).

2. It is the appellant's case that since it had succeeded before the Arbitral Tribunal, the PBGs were required to be returned and it was not permissible for the respondent to act contrary to the Arbitral Award and encash the same.

3. The appellant is essentially aggrieved by the operative part of the direction passed by the learned Single Judge inasmuch as the learned Single Judge had left it open for the respondent to invoke the PBGs in question but restrained the respondent from encashing the same. It was pointed out that subsequently, the matter was taken up for hearing by the learned Single Judge on 23.02.2024 and the said issue was also considered. The relevant extract of the order dated 23.02.2024 reads as under:

> "9. As the petition has been taken up today on an early hearing application, I have heard learned counsel only with regard to the direction for return of the PBGs. As far as this aspect is concerned, I am of the view that it would not be appropriate to permit IOCL to encash the PBGs in the face of the award to the contrary, and equities can be balanced by recording an undertaking on behalf of the respondent that in the event IOCL succeeds in its challenge to this aspect of the award, it would be liable to restitute the PBGs. Mr. Garg states, upon instructions, that the respondent undertakes as above.
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> 10. As far as the aspect of return of the PBGs is concerned, therefore, the award is not stayed, but the respondent is directed to submit an undertaking within one week from today to the effect that it would restitute the bank guarantees for the same amounts and subject to the same terms and conditions, if IOCL succeeds in its challenge to that aspect of the award.
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> 11. These directions are subject to the result of FAO(OS)(COMM)166/2023. They are also without prejudice to the rights and contentions of the parties in the pending petitions, and to Mr. Vasisht's request for further interim orders."

4. In compliance with the said direction, the appellant has furnished an undertaking in the form of an affidavit, *inter alia*, undertaking that in the event the respondent succeeds in its objections to the Arbitral Award dated 25.02.2023 in regard to the return of the above-mentioned four PBGs, the appellant would restitute the said four PBGs for the same amounts as stated in paragraph 4 of the said undertaking.

5. In view of the above, the appellant's grievance in the present appeal does not survive.

6. The learned counsel appearing for the respondent submits that the undertaking is required to be given to the Court and the undertaking furnished by the appellant does not satisfy the said condition. The said contention is unmerited. The undertaking furnished by the appellant is in the form of an affidavit and it is an undertaking to the Court. Accordingly, the respondent is

required to release the four PBGs forthwith and is directed to do so.

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

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 13, 2024
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