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

+ **O.M.P.(I) (COMM.) 81/2025 & I.A. 13335/2025**

M/S POWER MECH PROJECTS LIMITEDPetitioner

Through: Mr. P.S. Bindra, Senior Advocate
with Mr. Madhusudan, Mr. Ilam Paridi, Mr. Ankit
Kakkar, Ms. Shreya V. Mehra and Mr. Fazal
Haroon, Advocates.

versus

**NTPC BHEL POWER PROJECTS PRIVATE
LIMITED**

.....Respondent

Through: Mr. Puneet Taneja, Senior Advocate
with Mr. Anil Kumar, Mr. Manmohan Singh
Narula and Mr. Amit Yadav, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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29.05.2025

1. This petition is filed on behalf of the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 for restraining the Respondent from encashing the following Bank Guarantees ('BGs'), totalling to a sum of Rs.5,83,54,814/-:-

“• *Bank Guarantee bearing No. 16340100004845, dated 20.02.2016, issued by Axis Bank Limited, Credit Management Centre, Hyderabad to the tune of Rs. 4,43,28,358/- [Rupees Four Crores, Forty Three Lakhs, Twenty Eight Thousand, Three Hundred and Fifty Eight Only/-]*

• *Amended Bank Guarantee bearing No. OGT0004200047412 dated 09.09.2024, issued by IndusInd Bank Ltd., Secunderabad, Telangana to the tune of Rs. 36,07,411/- [Rupees Thirty Six Lakh Seven Thousand Four Hundred and Eleven Only].*

• *Amended Bank Guarantee bearing No. 75200IGL0013721, dated 11.09.2024, issued by Union Bank of India, Hyderabad, Telangana to the tune of Rs. 93,15,097/- [Rupees Ninety Three Lakhs Fifteen Thousand Five Hundred and Ninety Seven Only].*

• *Amended Guarantee bearing No. 75200IGL0028723, dated 11.09.2024,*



issued by Union Bank of India, Hyderabad, Telangana to the tune of Rs. 11,03,948/-[Rupees Eleven Lakh Three Thousand Nine Hundred and Forty Eight Only].”

2. Disputes in the present petition emanate out of a Contract Agreement dated 20.06.2016. Mr. P.S. Bindra, learned Senior Counsel for the Petitioner submits that BGs were furnished in consonance with Clauses 2 and 4 of the LOI and LOA respectively, read with Clauses 1.10 and 1.12 of General Conditions of Contract as security for performance of the Contract Agreement and were conditional in nature. BGs could be invoked only upon contractor's failure to fulfil the contractual obligations or in the event of non-performance or contract termination. Communication dated 19.12.2024 reflects that the claim of the Respondent is towards an alleged excess payment, which cannot be a ground to invoke and/or encash the BGs.

3. It is next argued that even assuming that the BGs were unconditional, law recognises three exceptions, wherein invocation/encashment can be restrained: (a) egregious fraud: (b) special equities: and (c) where the invocation is not in terms of the BGs. It is not the case of the Respondent that there is non-performance or breach of any other condition of the contract and therefore, the BGs cannot be invoked merely on an allegation of excess payment.

4. Mr. Punit Taneja, learned Senior Counsel for the Respondent *per contra* submits that BGs in question are unconditional BGs and can be invoked by the Respondent as Petitioner has neither pleaded nor set up a case, which falls in the exceptions. BG is an independent contract between the Respondent and on a mere demand by the Respondent, bank is under an obligation to honour the demand, irrespective of the dispute between the Petitioner and the Respondent. It is further urged that this petition is in any



event premature since the BGs in question have not been invoked so far and the communication, on the which the Petitioner places reliance, is a letter from the Respondent to the Petitioner intimating that excess payments have been made and in case the amount stated therein is not refunded, Respondent will recover the money from running bills, retentions and BG.

5. Heard.

6. In my view, there is merit in the contention of the Respondent that this petition is premature inasmuch as so far Respondent has not sent any communication to the bank invoking the BGs. In the absence of any invocation, this Court is not in a position to test the only argument of the Petitioner that the invocation is not in terms of the BGs. Communication dated 19.12.2024 is between the Respondent and the Petitioner intimating the alleged excess payments made to the Petitioner based on Contract Clause 2.17.4 as against the value of work done in the billing month.

7. Mr. Bindra fairly does not dispute the position that so far there is no invocation of the BGs and at this stage submits that the petition be disposed of, giving liberty to the Petitioner to approach the Court in case Respondent decides to invoke the BGs with a protection that in case any such action is taken by the Respondent, Petitioner will be put to seven days' notice. In support, reliance is placed on orders of this Court, where such protection has been granted.

8. This petition is accordingly disposed of since at this stage, there is no invocation of the BGs in question. It is made clear that Respondent is not precluded from invoking/encashing the BGs, in accordance with law and if so advised. However, in case the Respondent decides to take such action, seven days' notice shall be given to the Petitioner, to enable the Petitioner to



take recourse to legal remedies. It is also made clear that this Court has not expressed any opinion either on the merits of the case or on whether or not the BGs in question are conditional or unconditional or whether their invocation can be restrained.

9. Pending application stands disposed of.

JYOTI SINGH, J

MAY 29, 2025/shivam