

Ongc Petro Additions Limited vs Tecnimont Private Limited & Anr on 25 September, 2020

Author: Siddharth Mridul

Bench: Siddharth Mridul, Talwant Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(05) (COMM) 72/2020

ONGC PETRO ADDITIONS LIMITED Appellant

Through: Mr. Nakul Dewan, Senior Advocate
with Mr. K.R. Sasiprabhu and Mr.
Robin V.S., Advocates

versus

TECNIMONT PRIVATE LIMITED & ANR. Respondents

Through: Mr. Ritin Rai, Senior Advocate with
Mr. Karan Luthra, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 25.09.2020 The present matter has been taken up for hearing by way of Video Conferencing on account of COVID-19 pandemic. CM APPL.23896/2020 (Directions) The present application under Section 151 of the Code of Civil Procedure, 1908 has been instituted on behalf of the applicant/appellant prays as follows:

(a) Direct the respondents to extend the following Bank Guarantees and keep them valid and alive until further orders:

Advance Bank Guarantee S.No. BG No. Date of Issue Issuing Bank Amount

1. 171020560469 21.07.2018 Standard EUR 4,36,367 Chartered Bank

2. 171020560450 21.07.2018 Standard INR 62,36,099 Chartered Bank Performance Bank Guarantee

3. 46480 22.07.2011 BBVA USD 8,232,465/-

EUR 4,219,234/-

4. 110126IBGPO0064 26.07.2011 IDBI Counter INR Guarantee 64,27,00,845/-

5. DLG211/11 17.07.2011 ING Bank EUR N.V. 17,46,251/-

USD 13,42,627/-

INR 16,98,57,433/-

; and /or

(b) Pass such other or further orders as this Hon'ble Court may be pleased in the facts and circumstances of the case.

Issue notice.

Mr. Karan Luthra, learned counsel accepts notice on behalf of the non-applicant/respondent and does not wish to file a reply.

We have heard learned counsel appearing on behalf of the parties at length.

The relevant order sheets in the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the said Act'), instituted on behalf of the appellant, have been perused.

It is observed that for a variety of reasons, the said petition could not be heard despite applications seeking advancement of date of hearing having been instituted, and that the same is now listed for hearing before the learned Single Judge on 02.11.2020.

By way of order dated 24.06.2020, this Court had observed as follows: -

"Issue notice.

Mr. Karan Luthra, learned counsel accepts notice on behalf of the respondents and prays for time to file a reply.

Let the reply be filed within a period of four weeks from today with an advance copy to the learned counsel appearing on behalf of the appellant, who may file rejoinder thereto, if any, before the next date of hearing.

Learned Senior Counsel appearing on behalf of the parties have addressed us at length and invited our attention to the judgment impugned in the present appeal, in relation to the bank guarantees, furnished by the respondents to the appellants, as tabulated hereunder: -

S. No.	B.G. No.	Date of Issue	of Issuing Bank	Amount
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Advance Bank Guarantee				
1.	171020560469-LA	21.07.2018	Standard Chartered Bank	EUR 4,36,367
2.	171020560450-LA	21.07.2018	Standard Chartered Bank	INR 62,36,099
Performance Bank Guarantee				
3.	464840	22.07.2011	BBVA	USD 8,232,465/- EUR 4,219,234/-
4.	110126IBGP00064	26.07.2011	IDBI Counter	INR 64,27,00,845
5.	DLG211/11	17.07.2011	Guarantee ING BANK N.V.	EUR 17,46,251 USD 13,42,627 INR16,98,57,433

Insofar as the IDBI bank guarantee, which figures at serial No.4 in the table above is concerned, the same was the subject matter of the another proceeding before a Coordinate Bench of this Court and therefore, does not arise for consideration in the present appeal.

A large number of issues, in relation to the invocation of bank guarantees, in the aftermath of an arbitral award, including the issue whether the special equities are an exception to the jurisprudence governing the invocation of the bank guarantees namely, egregious fraud, irretrievable injustice or irretrievable harm, required to be adjudicated by way of an authoritative pronouncement, in the present appeal.

Therefore, having considered the scope and ambit of the orders rendered by this Court qua the subject matter of the present appeal, including the order dated 13.03.2020 in O.M.P (I) (COMM) No.73/2020 titled as 'Technimont Pvt. Ltd. and Anr. vs. ONGC Petro Additions Ltd.', and to secure the 'protectable interest' of the appellant, we direct the respondents to extend the validity of the four bank guarantees enumerated in the table hereinabove at serial Nos.1,2,3 and 5 till 30.09.2020, subject, however, to the appellants' reimbursing the respondents, all costs and expenses that the latter would incur in extending the validity of the above four bank guarantees till the said date, within a period of 10 working days when the appellant is notified by the respondents in this behalf.

At request of learned counsel appearing on behalf of the parties, we grant them liberty to file an appropriate application before the learned Single Judge in O.M.P.

(COMM) No.424/2020 titled as 'ONGC Petro Additions Ltd. vs. Tecnimont S.P.A. & Anr.', instituted on behalf of the appellant under Section 34 of the Arbitration and Conciliation Act, 1996, seeking advancement of the date of hearing of that proceeding itself, which is currently listed for hearing on 24.09.2020.

List on 27.08.2020.

Needless to state that, the judgment 20.06.2020, impugned in the present appeal is modified accordingly, save and except to the extent that the appellants are restrained from encashing the subject bank guarantees mentioned at serial Nos.1,2,3 and 5 of the above extracted table."

However, as aforesaid, the said petition under Section 34 of the said Act has not been adjudicated thus far and is now to be taken up for hearing by the learned Single Judge on 02.11.2020.

Therefore, for the reasons stated in the said order dated 24.06.2020 the respondents are directed to extend the validity of the four Bank Guarantees, enumerated in the table extracted below at serial number 1,2,3 and 5, till 12.11.2020, as expeditiously as possible, subject, however, to the appellants' reimbursing the respondents, all costs and expenses that the latter would incur in extending the validity of the below four bank guarantees till the said date, within a period of 10 working days when the appellant is notified by the respondents in this behalf: -

S. No. B.G. No. Date of Issue Issuing Bank Amount Advance Bank Guarantee

1. 171020560469-LA 21.07.2018 Standard EUR 4,36,367 Chartered Bank

2. 171020560450-LA 21.07.2018 Standard INR 62,36,099 Chartered Bank
Performance Bank Guarantee

3. 464840 22.07.2011 BBVA USD 8,232,465/-

EUR 4,219,234/-

4. 110126IBGPO0064 26.07.2011 IDBI INR Counter 64,27,00,845 Guarantee

5. DLG211/11 17.07.2011 ING BANK EUR 17,46,251 N.V. USD 13,42,627
INR16,98,57,433 With the above directions, the application is disposed of.

FAO (OS) (COMM) 72/2020 & CM APPL.13302/2020 (Stay) List on 12.11.2020 The parties are directed to complete the pleadings, if any, in the pending applications before the next date of hearing, with advance copies to learned counsel on the other side.

SIDDHARTH MRIDUL, J TALWANT SINGH, J SEPTEMBER 25, 2020/dn Click here to check corrigendum, if any