

Airports Authority Of India vs Tdi International India Pvt Limited on 17 March, 2023

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P. (COMM) 573/2020

AIRPORTS AUTHORITY OF INDIA

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Through: Mr. Vaibhav Kalra, Ms. Anisha
Upadhyay, Ms. Neha Bhatnagar &
Mr. Vijayant Singh, Advocates.

versus

TDI INTERNATIONAL INDIA PVT LIMITED Respondent

Through: Mr. Ashish Mohan & Mr. Samarth
Chowdhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 17.03.2023 I.A. 5261/2023 (Application on behalf of the petitioner for directions)

1. Issue notice. Mr. Ashish Mohan, learned counsel, accepts notice on behalf of the respondent. The application is taken up for disposal with the consent of learned counsel for the parties.

2. The petitioner has filed the present application for the following reliefs:-

"a) Issue necessary directions to the Hon'ble High Court Registry to take the Bank Guarantee No. No. 1731323BG0000216 for an amount of Rs. 10,50,38,903/- dated 15.02.2023 on record in the present form without adding the Clause as stipulated under Practice Direction No. 76 ;

b) Pass any such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The petitioner has challenged an arbitral award dated 01.08.2020.

By an order dated 07.12.2020, the petitioner-Airports Authority of India was directed to deposit the awarded amount in Court as a condition for stay of the impugned award. The petitioner has complied with the said directions.

4. By order dated 08.03.2021, the respondent-TDI International India Pvt. Ltd. was permitted to withdraw a substantial portion of the deposited amount, subject to the respondent furnishing a bank guarantee for the said amount. The respondent failed to furnish a bank guarantee and the money remained deposited in Court by the petitioner.

5. Upon the petitioner filing an application seeking to withdraw the deposited amount and substituting it with a bank guarantee [IA 13234/2022], this Court, vide judgment dated 27.01.2023, permitted the petitioner to do so.

6. The petitioner has arranged the bank guarantee in compliance with the aforesaid direction. However, on 17.02.2023, the Registry marked a defect to the extent that a mandatory clause with regard to renewal of the bank guarantee, in terms of the practice directions of this Court, has not been incorporated.

7. The practice directions in question were issued on 25.06.2021 pursuant to directions of this Court dated 02.06.2021 in FAO(OS)(COMM) 173 and 174/2018 [Ircon International vs. Hindustan Constructions Co. Ltd.]. It has been provided that, when a bank guarantee is furnished by the party for release of amounts deposited in the Court, it shall contain a term that the bank guarantee will be encashed by the bank if it has not been renewed at least 10 days prior to its expiry, and the amount will be remitted to the beneficiary.

8. It is submitted by Mr. Vaibhav Kalra, learned counsel for the petitioner, that this clause is inapplicable in the present case as the bank guarantee is furnished as security for stay of the award, and not as security for withdrawal of the amount by the decree holder during the pendency of the petition under Section 34 of the Arbitration and Conciliation Act, 1996. This issue was considered by this Court in another petition arising under substantially similar circumstances. By an order dated 13.07.2022 in O.M.P.(COMM) 345/2019 [Airports Authority of India vs. M/s Pradeep Hotel], this Court observed as follows:-

"4. It appears to me prima facie that the said clause refers to bank guarantees furnished by a party for release of amounts deposited in the Court. In the present case, the bank guarantee is to be furnished not for release of any amount, but as a condition for stay of the amount awarded. I am also prima facie of the view that where a bank guarantee is furnished as a condition for stay, invocation or release of the amount in terms of the Practice Directions is not required as the consequence of non-renewal of the bank guarantee would be that the stay would stand vacated."

The petition was then placed before the learned Registrar General, who passed an order dated 05.08.2022 to the same effect.

9. The present application arises in virtually identical circumstances. It is, therefore, made clear that in the circumstances of the present case, it is not necessary for the bank guarantee to contain the clause provided in paragraph (i) of the practice directions dated 25.06.2021.

10. The Registry is directed to act in accordance with these directions.

11. It is, however, expressly made clear that in the event the bank guarantee is not renewed by the petitioner, order of stay of the impugned award would automatically stand vacated.

12. The application is disposed of with these directions.

O.M.P. (COMM) 573/2020 List before the learned Joint Registrar for further proceedings on 28.03.20223.

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