

Technimont Pvt. Ltd. And Anr vs Ongc Petro Additions Ltd on 13 March, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P (I) (COMM) No. 73/2020 & IAs. 3496/2020 & 3497/2020 and CAV. No. 233/2020

TECHNIMONT PVT. LTD. AND ANR.

..... Petiti

Through: Mr. Rajiv Nayar, Sr. Adv. and
Mr. Ritin Rai, Sr. Adv. with Mr.
Agrawala, Ms. Shally Bhasin,
Mr. Karan Luthra, Mr. Prateek Gu
Ms. Madhavi Agrawal and
Mr. Abhipsit Mishra, Advs.

versus

ONGC PETRO ADDITIONS LTD.

..... Respond

Through: Mr. Nakul Dewan, Sr. Adv. with
K.R. Sasiprabhu, Mr. Aditya Swa
and Mr. Aditya Shandilya, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 13.03.2020 This petition has been listed vide supplementary list circulated in the post lunch session on a mentioning made before Hon'ble Ms. Justice Mukta Gupta.

As the learned counsel for the defendant / caveator appears, caveat stands discharged.

IAs. 3496/2020 & 3497/2020 (for exemptions) Exemptions allowed subject to all just exceptions. The applications stand disposed of.

This petition has been filed by the petitioner with the following prayers:

"In the circumstances, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to:

(a) Restrain the Respondent from acting upon its communication issued to ING Bank N.V. (communication to the Petitioner vide e-

mail dated 10.03.2020) invoking the Performance Bank Guarantee bearing No. DLG211/11 dated 17.06.2011 and consequently restrain the Respondent from encashing and / or receiving any monies pursuant to the said e-mail:

(b) Restrain the Respondent from invoking and / or encashing the following Bank Guarantees furnished by the Petitioners: -

SNO. BG No. Date of Issuing Amount Valid till issue Bank Advance Bank Guarantees

1. 171020560469- 21.07.2018 Standard Euro 31.03.2020 LA Chartered 4,36,367/-

Bank

2. 171020560450- 21.07.2018 Standard Euro 31.03.2020 LA Chartered 62,36,099/-

Bank Performance Bank Guarantees

3. 464840 22.07.2011 BBVA US\$ 14.03.2020 8,232,465/-

Euro 4,219,234/-

4. 110126IBGP00064 26.07.2011 IDBI INR Claim 64,27,00,845 Expiry Date -

14.12.2020

5. 464841 22.07.2011 BBVA INR Claim Counter 64,27,00,845 Expiry guarantee Date -

14.12.2020

(c) Direct the Respondent to deliver up to the petitioner the original Performance Bank Guarantee bearing No. DLG211/11 dated 17.06.2011, issued by ING Bank N.V. In favour of the Respondent and remaining Original Performance and Advance Bank Guarantee mentioned in the table above.

(d) Pass any such other / further order (s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case and in the interest of justice.

2. In substance, the grievance of the petitioners is against the invocation of the following three bank guarantees by the respondent, even though an award has been rendered by the Arbitral Tribunal in their favour.

1. DLG211/11 17.06.2011

2. 464840 22.07.2011 BBVA US\$ 8,232,465/- 14.03.2020 Euro 4,219,234/-

3. 110126IBGPO0064 26.07.2011 IDBI INR 64,27,00,845 Claim Expiry Date -

14.12.2020

3. In fact, it is the submission of Mr. Rajiv Nayar, learned Sr. Counsel appearing for the petitioner, that in view of the award, the bank guarantees are required to be returned back to the petitioner.

4. On the other hand, Mr. Dewan, learned Sr. Counsel appearing for the respondent on advance notice states, despite a communication from the respondent to the petitioner to extend the validity of the three bank guarantees, they did not do so, resulting in the invocation of the bank guarantees by sending a communication(s) to the concerned Banks. In other words, he states, had the petitioner extended the validity of the bank guarantees, the respondent would not have sent the communication(s) to the Bank seeking invocation of the bank guarantees. He states that as objections have been filed by the respondent under Section 34 of the Arbitration and Conciliation Act, 1996 to the award which is likely to be listed at the earliest, if the bank guarantees are invoked, the petition shall be rendered infructuous.

5. Noting the submissions, this court deem it appropriate to dispose of the petition by directing the petitioners to extend the validity of the aforesaid three bank guarantees for a period of one month within which time, the respondent shall get their petition under Section 34 listed and seek appropriate orders.

6. A question arose, as to who shall bear the expenses for extending the validity of the three bank guarantees. Mr. Nayar states, as similar claim(s) of the petitioners was also allowed in favour of the petitioner by the Arbitral Tribunal it should be the respondent who shall bear the cost.

7. To balance the equities, the petitioner is directed to bear the expenses for extending the validity of the bank guarantees and the expenses so incurred by the petitioners for extending the bank guarantees shall be communicated to the respondent, who shall deposit the amount in this court within three weeks from the date of communication. It is also made clear that the deposit of the charges for extending the bank guarantees shall be subject to the final orders to be passed by the court in the petition to be filed by the respondent under Section 34 of the Arbitration and Conciliation Act.

8. In take on record the statement made by Mr. Dewan that in so far as the other three bank guarantees being at serial nos. 1, 2 and 5 above are concerned, as the validity of the said bank guarantees expires in the month of December, 2020 as of now respondent shall not invoke the said bank guarantees. I also take on record the statement made by Mr. Dewan that in view of this order passed by the court, communications made by the respondent with the banks invoking the bank guarantees, shall be withdrawn.

9. It is made clear that this court has not decided prayer (c) as prayed for by the petitioner in the present petition.

Petition stands disposed of.

A copy of this order be given dasti under the Signatures of the Court Master.

V. KAMESWAR RAO, J MARCH 13, 2020 /jg