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

+ **FAO (COMM) 129/2021**

SPML INFRA LTD

..... Appellant

Through: **Mr. Sayan Ray & Mr. Parag
Chaturvedi, Advocates.**

versus

HITACHI INDIA (P) LTD. AND ANR

..... Respondents

Through: **Mr. Prasouk Jain with Ms. Rabiya
Thakur, Advocates.
Mr. Ateev Mathur, Advocate for
Respondent No.2 (SCB)**

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Date of Decision: 27th August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

The hearing has been done by way of video conferencing.

CM APPL.28298/2021

Exemption allowed, subject to all just exceptions.

Accordingly, application stands disposed of.

FAO (COMM) 129/2021 & CM APPL. 28297/2021

1. Present appeal has been filed challenging the order dated 23rd July, 2021 passed by Learned District Judge, Commercial Court-02, South East District, Saket District Courts ("Trial Court") in OMP(I) (Comm) No. 192/2021 whereby the Trial Court has passed an *ex parte* ad-interim status

quo order as regards the encashment of Respondent's No. 2 Bank Guarantees for Rs.16,20,000/- in an application filed by Respondent No. 1 under Section 9 of the Arbitration and Conciliation Act, 1996.

2. Learned counsel for the appellant states that the Bank Guarantee was invoked as the Respondent no.1 had not extended the said Bank Guarantee up to 31st March, 2022.

3. Issue notice. Mr. Prasouk Jain, Advocate accepts notice on behalf of Respondent no.1 and Mr. Ateev Mathur, Advocate accepts notice on behalf of Respondent no.2.

4. Learned counsel for the respondents state that the Bank Guarantee in question has been extended till 31st March, 2022. Let the original extended Bank Guarantee be furnished to the learned counsel for the appellant within a week.

5. In view of the aforesaid statement, this Court was inclined to dispose of not only the appeal but also the Section 9 petition filed by the respondent no.1. However, Mr. Jain, learned counsel for respondent no.1, states that he would like to press for an injunction order before the trial court restraining the appellant from encashing the Bank Guarantee in question during its validity period. In support of his contention, he draws this Court's attention to learned Single Judge's order dated 22nd July, 2021, passed in a similar matter between the same parties.

6. *Prima facie* this Court is of the opinion that Bank Guarantees are not furnished for being photo framed and kept in a drawing room. The learned Single Judge in the order dated 22nd July, 2021, has advisedly used the expression that '*the order has been passed in view of the consensus arrived at between the parties*'. There is no judicial finding that a Bank Guarantee

cannot be encashed during its validity.

7. In our view, the Court cannot injunct encashment of a bank guarantee during its validity if a cause of action arises in future. Bank guarantee has a meaning and legal sanctity attached to it. The Supreme Court in *U.P. Cooperative Federation Ltd. vs. Singh Consultants and Engineers (P) Ltd.*, (1988) 1 SCC 174, has held that bank guarantees must be honoured free from interference by Courts, otherwise, trust in commerce internal and international would be irreparably damaged. Recently, in *Andhra Pradesh Pollution Control Board vs. CCL Products (India) Limited*, 2019 SCC OnLine SC 985, the Supreme Court has held as under:

“23. The settled legal position which has emerged from the precedents of this Court is that absent a case of fraud, irretrievable injustice and special equities, the Court should not interfere with the invocation or encashment of a bank guarantee so long as the invocation was in terms of the bank guarantee.”

8. However, learned counsel for the respondent no.1 insists on arguing the matter and showing some documents. Respondent no.1 is given an opportunity to file whatever documents he wishes to rely upon within a week.

9. List on 13th September, 2021.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 27, 2021/AS