(2016) 07 MP CK 0047

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3018 of 2016

Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd. APPELLANT

Vs

Easun Reyrolle Limited, Chennai RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 126
Evidence Act, 1872 — Section 115

Citation : (2017) 170 AIC 355 : (2017) 1 CivilLJ 799 : (2016) 4 MPLJ 716

Hon'ble Judges : Shri S.K. Seth and Shri Justice H.P. Singh, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Shri S.K. Seth, J. - Is the respondent No. 2 Bank justified in law in refusing to en-cash a confirmed and irrevocable Bank Guarantee issued by it? That is the short and the only question which arises for our consideration in this petition.

2. Relevant and material facts, culled out from pleadings and documents available on record, and not in dispute, lie in a narrow compass.

3. On 2.4.2012 petitioner entered into a contract with the respondent No.1 for delivery, installation, complete and commission of certain facilities viz. for survey, design, manufacture, pre-dispatch, inspection,testing, supply of plant and material, storage, installation and commission of SCADA equipment on turn-key and maintain the system for next 5 years, from the declaration of successful commissioning of the SCADA equipment at Jabalpur town against the RAPDRP part B.

4. In view of termand conditions of the contract, respondent No. 2(State Bank of India, Overseas Branch, Bangalore) on 23.4.2012 issued a confirmed and irrevocable Bank Guarantee of Rs. 2,16,73,658/- payable on demand of the petitioner (beneficiary). Thrice in the past, the validity of the Bank Guarantee

was extended and now it is valid up to 28.7.2016.

5. On account of unsatisfactory delay in execution of the work,petitioner terminated the contract on 5.1.2016 and on the same day, raised demand for payment of the amount covered under the Bank Guarantee.

6. Instead of honouring its obligation and commitment,respondent No. 2 on 8.1.2016 wrote back to the petitioner stating that it was a condition for any claim and payment under the guarantee to be made that the advance payment must have been received by the Contractor on its SBI account at Bangalore.

7. On 9.1.2016 petitioner reiterated the demand stating that as per request of respondent No. 1, mobilisation advance was paid in its bank account with the ICICI Bank under intimation to all concerned and the same was acknowledged by the representative of the respondent No. 1 at Jabalpur. It was also pointed out that Bank Guarantee in question was extended regularly well before its expiry by the respondent no. 2 without raising any queries. Final claims were also lodged by the petitioner before the expiry of the BG, 3 times during the currency of the BG period or extension thereof and respondent No. 2 never raised any objection of any sort. Along with the said communication, all supporting documents were enclosed.

8. After receipt of above communication, respondent Bank changed its stand and submitted that the payment of mobilisation amount should be confirmed by the respondent No. 1. When this was replied to, respondent Bank has now taken a stand that the Bank Guarantee is an irrevocable guarantee and could not be en-cashed. This stand is not borne out from record. Petitioner is aggrieved by the deliberate and the arbitrary refusal of the State Bank of India to en-cash the Bank Guarantee furnished by it in favour of the petitioner.

9. After having heard the rival submissions at length and on a careful analysis of the decisions cited at the Bar, we are of the considered opinion that the stand taken by the respondent No. 2 Bank is untenable and the petition must allowed with costs.

10. It is well settled that a confirmed and irrevocable Bank Guarantee, or Letter of Credit is a commercial document issued by a Bank for the benefit of the beneficiary and it could be invoked in a commercial manner.

The law relating to the invocation of Bank Guarantee is equally well settled by the Supreme Court in a series of decisions. Bank guarantee which provides that it is payable on demand by the beneficiary is considered to be an unconditional Bank Guarantee.

11. When in the course of commercial dealings, unconditional guarantee is given and accepted by the beneficiary, later is entitled to realise such a Bank Guarantee on the very demand and his demand is conclusive.

12. In such a case, the beneficiary is the sole Judge as to the breach of contract

and the Bank has to discharge its obligation on a demand being raised by the beneficiary in the manner prescribed. A letter of credit or a Bank Guarantee is independent of primary contract between the party furnishing the Bank Guarantee and the beneficiary.

The issuing Bank is not concerned with the underlying contract between the purchaser and the beneficiary. It is equally well settled that the Courts would do their utmost to enforce it according to its terms and they will not, in the ordinary course of things, interfere to prevent its due implementation or performance. But this is not an absolute rule.There are exceptions to it. For example, when a Bank Guarantee is tainted with fraud,which would vitiate the very foundation of the guarantee, and the beneficiary is trying to take advantage thereof, the Court certainly would not come to the rescue of the beneficiary.

Such is not the case here. Plea of fraud is neither set up, nor is the relevant material placed on record. The Bank is estopped by its own conduct when it renewed/extended the Bank Guarantee without demur or protest.

13. We, therefore, cannot come to rescue of respondent No.2. Reliance placed on the decision in the case of Hindustan Construction Co. Ltd. v. State of Bihar reported in (1998) 8 SCC 436, is of no avail to the respondent No. 2 Bank, as the facts of the decided case are clearly distinct from the facts of the case in hand. Thus, we find it difficult to sustain the inaction of the Bank.

14. We are supported in taking this view by the decisions of the Supreme Court in the case of United Commercial Bank v. Bank of India-AIR 1981 SC 1426; Svenska Handelshanken v. M/s. Indian Charge Chrome-AIR 1994 SC 626; National Thermal Power Corporation Ltd, v. Flowmore Pvt. Ltd. & another-(1995) 4 SCC 515; Hindustan Steel Works Construction Ltd. v. Tarapore Co. & another (1995) 5 SCC 34; U.P. Sugar Corporation v. Sumac International Ltd. (1997) 1 SCC 568; Himadri Chemicals v. Coal Tar Refining Company-AIR 2007 SC 2798; Vinitec Electronics (P) Ltd. v. HCL Infosystems Ltd., (2008) 1 SCC 544; Bank of India v. Nagia Construction (I) Pvt. Ltd & another (2008) 8 SCC 290,

15. In view of the foregoing discussion, we allow the writ petition with costs of Rs. 25,000/- and direct the respondent Bank to immediately discharge its commercial obligation in favour of petitioner in terms of the Bank Guarantee.

16. Ordered accordingly.