

(2013) 08 CAL CK 0058
In the Calcutta High Court
Case No : W.P. No. 25106(W) of 2013

Sarda Energy and Minerals Limited

APPELLANT

Vs

W.B. Power Development Corporation Ltd.

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2014) 1 CHN 378

Hon'ble Judges : S. Banerjee, J

Bench : Single Bench

Judgement

S. Banerjee, J.—The petitioners have referred to several extraneous matters in seeking to assail the invocation by the West Bengal Power Development Corporation of an unconditional bank guarantee furnished at the behest of the petitioner company. The petitioners complain that notwithstanding the agreement between the Power Development Corporation and the first petitioner that the first petitioner would be entitled to demolish, dismantle and remove all the goods pertaining to the decommissioned unit Nos. 1, 2, 3 and 4 at the Santaldih Thermal Power Station, the respondent authorities have permitted the goods to be removed by others and despite complaints by the petitioners, the respondent authorities have paid no heed thereto.

2. The relevance to such matter as above in connection with the bank guarantee is as relevant as the weather outside the Court room.

3. The petitioners also complain that the beneficiary has invoked the bank guarantee by writing directly to the bank and not marking a copy thereof to the petitioner company. If the Power Development Corporation has taken such a step, it is refreshingly original and must be encouraged. Oftentimes, beneficiaries of bank guarantees, particularly public bodies which are beneficiaries, favour the contractor by forwarding a copy of the letter of invocation and thus open a window for the contractor to obtain an injunction against the letter of invocation.

4. It is elementary that a bank guarantee is a contract between the bank and the

beneficiary whereunder a bank undertakes to make the specified payment to the beneficiary upon certain conditions as stated in the document arising. In case of an unconditional bank guarantee, all that the bank needs to be satisfied with, before releasing payment thereunder is the invocation thereof in terms of the relevant document. The contractor, in most cases, may not have anything to do with the invocation. The relevant clause in the bank guarantee in this case provides, inter alia, that the bank "do hereby guarantee; and undertake Low pay... on demand any and all money payable by the (first petitioner herein)... without any demur, reservation, contest, recourse or protest and or without any reference to the (the first petitioner)."

5. It is inconceivable, given the unambiguous words of the relevant bank guarantee, that the first petitioner as the contractor at whose behest the guarantee has been furnished, would have any right to create any impediment in the bank promptly releasing payment under the bank guarantee upon the invocation thereof.

6. Though the expression is now cliched, it must always be remembered that bank guarantees and letters of credit are the life-blood of commerce and trade. Unconditional bank guarantees and irrecoverable letters of credit can scarcely be interfered with by Courts unless extraordinary circumstances are cited and a case of irretrievable injury or special equity is made out. Indeed, bank guarantees and letters of credit are issued to ensure that the payments thereunder are kept insulated from the disputes between the parties to the underlying contracts. The present petition is in abject derogation of such judicially recognised canon.

7. The bank has understood the demand made by the Power Development Corporation to be a letter of invocation. The bank has informed the petitioners accordingly by a letter dated August 16, 2013, a copy whereof appears at page 115 of the petition.

8. Since the bank guarantee is a contract between the bank and the beneficiary and the bank has understood the beneficiary to have invoked the same and further since the bank guarantee is unconditional and does not permit the disputes between the parties to the underlying contract to interdict the payment thereunder, the present challenge is misconceived.

9. As the best arguable case of the petitioner does not warrant any order, no useful purpose would be served in keeping the petition alive. WP No. 25106(W) of 2013 is dismissed with costs.

10. Nothing in this order will prevent the petitioner company from pursuing any remedy pertaining to the underlying contract, including for refund of the money covered by the bank guarantee, in accordance with law. Urgent certified website copies of this order, if applied for, be made available to the parties, subject to compliance with all requisite formalities.