

(2017) 01 CAL CK 0015
In the Calcutta High Court
Case No : 889 of 2017

TECHMA ENGINEERING ENTERPRISE PVT. LTD.

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

[Arbitration & Conciliation Act, 1996](#), Section 9

Citation : (2017) 01 CAL CK 0015

Hon'ble Judges : Ashis Kumar Chakraborty

Bench : SINGLE BENCH

Advocate : Srijib Chakraborty, Urmila Chakraborty, Aasish Choudhury, A. Basu, Arun Kumar Mishra

Final Decision : Dismissed

Judgement

1. The Court : This is an application under Section 9 of the Arbitration & Conciliation Act, 1996, as amended by Act 3 of 2016 (in short, "the Act of 1996").
2. The petitioner prays for re-imposition of the interim order dated October 12, 2017 passed by a learned Single Judge of this Court in the Vacation Bench, whereby the respondent Railway was restrained from invoking the bank guarantee issued by the Union Bank of India, Dharmatala Branch at its instance. The said bank guarantee was caused to be issued by the petitioner as and by way of performance guarantee. By the said order dated October 12, 2017 the learned Single Judge also stayed the operation of the notice dated September 20, 2016 issued by the respondent Railway thereby cancelling the purchase order dated February 22, 2017 issued in favour of the petitioner. The said interim order dated October 12, 2017 was valid for a period of six weeks.
3. In the instant case, the respondent Railway issued the purchase order dated February 22, 2017 to the petitioner for obtaining supply of certain articles. The said purchase order dated February 22, 2017 categorically mentioned that the same would be subject to the terms and conditions mentioned in the Indian

Railways Standard Conditions of Contract (latest edition). Admittedly, by virtue of the arbitration clause mentioned in the Indian Railways Standard Conditions of Contract (latest edition) all the disputes between the parties relating to the said purchase order dated February 22, 2017 are required to be adjudicated in arbitral proceeding under the Act of 1996.

4. According to the petitioner, the price variation clause which was applicable relating to the said purchase order dated February 22, 2017 has been unilaterally modified by the respondent and by the letter dated September 5, 2017 it communicated to the respondent that such modification of the price variation clause is not acceptable. After receipt of the said letter dated September 5, 2017 from the petitioner, the respondent Railway cancelled the said purchase order dated February 22, 2017 issued to the petitioner. The respondent also invoked the bank guarantee issued on behalf of the respondent Railway by Union Bank of India for Rs.10,00,000/- (Rupees Ten Lakhs only) towards performance guarantee and called upon the latter to immediately remit the proceeds of the bank guarantee to them. It is contended by the petitioner that since the respondent unilaterally modified the price variation clause, the same was not acceptable to the petitioner and the cancellation of the purchase order dated February 22, 2017 and invocation of the bank guarantee by the respondent is illegal and void. Therefore, according to the petitioner it is entitled to obtain orders of injunction as have been prayed for in this application.

5. However, Mr. Mishra learned Advocate appearing for the respondent Railway, submitted that the interim order dated October 12, 2017 has already expired. He further submitted that since the bank guarantee in question issued to the respondent by the Union Bank of India is a separate contract between the bank and the respondent, the petitioner cannot obtain any order of injunction stalling either the invocation of the said bank guarantee or transfer of the proceeds of the bank guarantee by the bank to the respondent. He further submitted that the disputes between the parties with regard to the validity of the termination of the said purchase order dated February 22, 2017 by the respondent is to be adjudicated in the arbitral proceeding by the Arbitrator. On these grounds it was strongly argued for the respondent that this application filed by the petitioner should be dismissed with exemplary costs.

6. I have considered the materials on record as well as arguments advanced by the learned Advocates appearing for the respective parties.

7. In the instant case, the bank guarantee issued by the Union Bank of India in favour of the respondent Railway is a separate contract between them and the petitioner in this application under Section 9 of the Act of 1996, could not obtain any order of injunction restraining the invocation of the said bank guarantee.

8. In this application the petitioner has made out no case to substantiate that invocation of the bank guarantee by the respondent is vitiated by any fraud or there exist any special equity in favour of the petitioner against invocation of

bank guarantee.

9. Further, whether the termination of the petitioner's purchase order dated February 22, 2017 by the respondent Railway is lawful or not is to be adjudicated by an arbitrator in the appropriate arbitral proceeding.

10. For all the foregoing reasons, I find that this application, at the instance of the petitioner for an order of injunction restraining the respondent from invoking the bank guarantee issued by the Union Bank of India on account of performance bank guarantee by the petitioner and stay the operation of the termination letter dated September 15, 2017 is not maintainable and the same has been filed in utter abuse of process of Court.

11. Accordingly, A.P. No.889 of 2017 stands dismissed with costs assessed at Rs.20,000/- (Rupees Twenty Thousand only) to be paid by the petitioner to the State Legal Services Authority, within a period of two weeks from date.

12. Let this application appear under the heading "To Be Mentioned" on December 18, 2017 to ascertain whether the petitioner has complied with the above directions for payment of costs.

13. Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.