

Arb.O.P.(Com.Div) No.302 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**Reserved on : 30.08.2023**

**Pronounced on : 11.09.2023**

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**Arb.O.P.(Com.Div) No.302 of 2023**

**and**

**O.A. No.267 of 2023**

M/s.National Federation of Farmers,  
Procurement Processing &  
Retailing Cooperatives of India Ltd.,  
Corporate Office: NACOF, Office No.102,  
Taj Ambassador, IHCL Seleqtions,  
Sujan Sing Park, Subramania Bharti Marag,  
New Delhi - 110 003.

Represented by P.Suresh Babu

...

Petitioner

vs.

M/s.NLC India Limited,  
No.135, EVR Periyar High Road,  
Kilpauk, Chennai - 600 010,  
Tamil Nadu, India.

...

Respondent

**Prayer :** Arbitration Original Petition (Commercial Division) filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondent and to direct the respondent to pay the cost.



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For petitioner : Mr.A.L.Somayaj,  
Senior Counsel  
for Mr.G.Kalyan Jhabakh  
for M/s.Surana and Surana

For respondents : Mr.N.Nithianandam  
for R1

Mr.O.S.Karthikeyan  
for R2

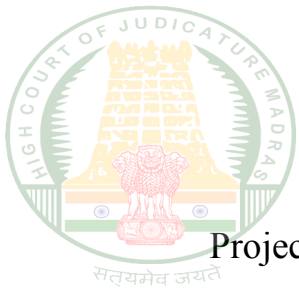
### ORDER

The issue that arises for consideration in Arb.O.P.(Com.Div) No.302 of 2023 as well as in the application O.A. No.267 of 2023 are as follows:

- a) Whether the dispute raised by the applicant / petitioner is an arbitrable dispute;
- b) Whether the applicant / petitioner has satisfied the legal requirements for obtaining an order of injunction from invocation of bank guarantee.

### 2. The brief facts leading to the filing of O.A. No.267 of 2023 and Arb.O.P.(Com.Div) No.302 of 2023:

The applicant / petitioner participated in a tender called for by the first respondent for setting up of 500 MW ISTS connected Solar Power



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Project on PAN India basis with Operation and Maintenance for 3 years.

One of the tender requirements was that the bidder will have to furnish a bank guarantee for a value of Rs.10,94,06,000/- for every 100 MW along with the bid.

3. The applicant / petitioner as the leader of the consortium, responded to the tender and had bid for 200 MW of Solar Power Project.

The other consortium partners were

- (i) M/s. U-Solar Clean Energy Solutions Private Limited; and
- (ii) M/s.Nitin Sai Constructions.

4. In compliance with the tender requirements, the applicant / petitioner had furnished a bank guarantee from the second respondent bank for a sum of Rs.21,88,12,000/- dated 31.12.2022 which was valid till 30.11.2023. The first respondent, by its letter dated 27.03.2023, informed the applicant / petitioner that its bid is disqualified, since the letter dated 20.06.2021 issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL) is a fabricated document. The said letter was submitted by the applicant / petitioner to the first respondent as part of



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the tender requirements.

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5. According to the applicant / petitioner, even without giving any opportunity to clarify with regard to the letter dated 20.06.2021 issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL) which is the reason given by the first respondent for disqualification of the applicant's / petitioner's bid, the first respondent has attempted to arbitrarily and illegally invoke the bank guarantee of Rs.21,88,12,000/- given by the applicant / petitioner along with its bid.

6. According to the applicant / petitioner, if the bank guarantee is allowed to be invoked by the first respondent, the petitioner will suffer irreparable injury. The applicant / petitioner also contends that the allegation of the first respondent that the applicant / petitioner had submitted a fabricated document, viz., the letter dated 20.06.2021 issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL) is false.

7. In the aforementioned circumstances, O.A.No.267 of 2023 has been filed by the applicant / petitioner for an injunction to restrain the



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first respondent from invoking the bank guarantee for a sum of  
Rs.21,88,12,000/- pending disposal of the arbitration.

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8. The applicant / petitioner also contends that there is a valid arbitration agreement between the parties to the dispute. According to the applicant / petitioner, Volume - I A, which deals with pre-tendering stage, which is applicable to the case on hand, directs the applicant / petitioner to visit the website **www.nlcindia.in/www.procure.nlcindia.in** or Central Public Procurement Portal (CPPP) of Government of India website **www.eprocure.gov.in** or contract. According to the applicant / petitioner, when the above websites are accessed, they direct the person to the manual for public procurement policy (Make in India) and manual for procurement of works (updated in June, 2022).

9. According to the applicant / petitioner, in the manual in clause 6.8, the dispute resolution mechanism has been referred to. According to the applicant / petitioner, Clause 6.10 clearly refers to Arbitration and clause 6.10.1 refers to arbitration and dispute resolution. Hence, according to the applicant / petitioner, arbitration shall be the dispute



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resolution mechanism for any dispute arising out of the tender. The applicant / petitioner also contends that when Volume - I B of the tender document stipulates arbitration and conciliation as the dispute resolution mechanism for any dispute arising at the post-tendering stage of the contract, the intention of the parties to the dispute is only to go for arbitration, even if a dispute arises in the pre-tendering stage as in the case on hand.

10. The applicant / petitioner has also invoked arbitration by issuing a notice to the first respondent dated 08.06.2023 through its counsel, nominating its arbitrator to adjudicate the dispute between the applicant / petitioner and the first respondent. Since the first respondent has not agreed for arbitration, the applicant / petitioner has filed Arb.O.P.(Com.Div) No.302 of 2023 under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.

11. However, according to the first respondent, on opening of the bid submitted by the applicant / petitioner, it was found that there were



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shortfalls in the qualification requirements (QRs) submitted by the applicant / petitioner. According to them, as a result of the same, clarification No.1 dated 02.02.2023 was sent by the first respondent to the applicant / petitioner fixing the deadline as 12.02.2023, asking them to provide details in terms of the invitation to bid. In reply, the applicant / petitioner has submitted certain documents on 07.02.2023. According to the first respondent, even thereafter, there was shortfalls in the qualification requirements (QRs) submitted by the applicant / petitioner. According to the first respondent, as a result of the same, they sent a letter dated 13.02.2023 to the applicant / petitioner, seeking further clarifications as to the qualification requirements (QRs) of the applicant / petitioner fixing the deadline date as 16.02.2023. In reply, the applicant / petitioner, in support of the further qualification requirements (QRs), on 15.02.2023 has submitted a certificate dated 20.06.2021 issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL), Ajmeer - 305 004, Rajasthan to M/s.Kanchan India Limited towards the qualification of one of the consortium partner M/s.U Solar Clean Energy Solutions for the work awarded by solar developer M/s.Kanchan India Limited along with other documents.



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**WEB COPY** 12. According to the first respondent, in terms of clause 2.8 (d) of other conditions in Volume - I A invitation to bid, the first respondent by letter dated 25.02.2023 requested confirmation from M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL), Ajmeer - 305 004 as to the issuance and genuineness of their certificate dated 20.06.2021. According to the first respondent, simultaneously the letter dated 27.02.2023 was also addressed to the project head, Barsingsar Project of the first respondent to depute an executive to Ajmeer to verify the authenticity of the certificate dated 20.06.2021 allegedly issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL), Ajmeer - 305 004.

13. According to the first respondent, the Superintending Engineer (Commercial), AVVNL, Ajmeer, by letter dated 03.03.2023, categorically informed the first respondent that the certificate dated 20.06.2021 was not issued by them to solar developer M/s.Kanchan India Limited and it is a fabricated document. According to the first respondent, its executives after physical verification of the records have also submitted a report dated 03.03.2023 to the first respondent stating





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that the certificate dated 20.06.2021 was not issued by the office of the Superintending Engineer (Commercial), AVVNL, Ajmeer. According to the first respondent, similarly, the executives of the first respondent who were sent to Bhilwara also found that "14.5 MW DC Solar Project at Nanakpura was neither existing nor installed by M/s.U-Solar Clean Energy Solutions" as claimed in the QRs by the applicant / petitioner.

14. According to the first respondent, it is *prima facie* evident that the applicant / petitioner indulged in submitting fabricated / bogus certificates in support of QRs to participate in the subject tender in violation of tender conditions, viz., clause - 2.8 (c) / Other conditions of Section - 1 of Volume - I A; Clause - 3.8.1 (vii) (e) of Section - 3 of Volume - I A and Clause - 3.2.9 (ii) of Section 3 of Volume - I A.

15. According to the first respondent, in terms of the aforementioned clauses, the first respondent is entitled to forfeit bank guarantee submitted by the applicant / petitioner for the serious misconduct and also on account of the ban of the applicant / petitioner for two years from participating in tenders in addition to other



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consequential actions. Therefore, according to the first respondent, only in accordance with the terms of the invitation to bid, they had invoked the bank guarantee by their communication dated 27.03.2023 to the second respondent bank. It is also their case that by an inadvertent mistake, the date of the tender alone was incorrectly stated as 21.01.2019 instead of 25.07.2022 in their communication dated 31.12.2022 to the second respondent bank.

16. It is also contended by the first respondent that simultaneously a letter dated 27.03.2023 was addressed by the first respondent to the applicant / petitioner intimating the details of fabricated / bogus certificates submitted by them in support of QRs, disqualification of their offer and the actions to be initiated in terms of the tender conditions. According to them, an untenable reply dated 28.03.2023 was sent by the first respondent to the letter dated 27.03.2023. According to the first respondent, both the letter dated 27.03.2023 as well as the reply dated 28.03.2023 were deliberately not filed by the applicant / petitioner when they moved the application under Section 9 of the Arbitration and Conciliation Act, 1996 and got an *ex-parte* interim order in their favour



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on 29.03.2023.

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17. According to the first respondent, for committing serious misconduct, the applicant / petitioner is not entitled to any discretionary relief as prayed for in the Section 9 application.

18. According to the first respondent, the invocation of the bank guarantee is legal, valid and it is in terms of Volume - I A invitation to bid. According to them, there is no illegality and / or infirmity in the lodging of the claim by the first respondent with the second respondent bank. It is also their case, that there is no fraud and / or arbitrariness in the lodging / invocation of the bank guarantee by the first respondent. It is also their case that the applicant / petitioner has not satisfied the legal requirements for obtaining an order of injunction to restrain the first respondent from invoking the bank guarantee. It is also their case, that the applicant / petitioner and its consortium are not required to be put on notice before taking action in terms of the tender conditions for the serious misconduct and / or breaches and /or violations committed by the applicant / petitioner.



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**WEB COPY** 19. Since the Section 9 application, viz., O.A.No.267 of 2023 and Section 11 petition, viz., Arb.O.P.(Com.Div) No.302 of 2023 are connected to one another, both O.A.No.267 of 2023 and Arb.O.P.(Com.Div) No.302 of 2023 are being disposed of by a common order.

20. Heard, Mr.A.L.Somayaj, learned Senior Counsel for Mr.G.Kalyan Jhabakh for M/s.Surana and Surana, Mr.N.Nithianandam, learned counsel for respondent No.1 and Mr.O.S.Karthikeyan, learned counsel for respondent No.2.

21. Mr.A.L.Somayaj, learned Senior Counsel appearing for the applicant / petitioner drew the attention of this Court to the relevant documents which have been filed in support of Section 9 application as well as the Section 11 application. He reiterated the contents of the affidavit filed in support of O.A.No.267 of 2023 and the contents of the petition filed in support of Arb.O.P.(Com.Div) No.302 of 2023. The learned counsel for the first respondent also reiterated the contents of the



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counter affidavit filed by the first respondent in O.A.No.267 of 2023 and in Arb.O.P.(Com.Div) No.302 of 2023 in his submissions.

22. In support of his submissions, the learned Senior Counsel appearing for the applicant / petitioner, relied upon the decision of the Honourable Supreme Court in the case of *Unissi (India) Private Limited Vs. Post Graduate Institute of Medical Education and Research* reported in *2009 (1) SCC 107*.

23. Relying upon the aforesaid decision, the learned Senior Counsel for the applicant / petitioner would point out that if the contract is in writing and a reference is made to a document containing an arbitration clause as part of the transaction, it would mean that the arbitration agreement is part of the contract. The learned senior counsel for the applicant / petitioner would submit that in the case on hand also there is a reference to a document which makes it mandatory for the parties to go for arbitration.



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**WEB COPY** 24. On the other hand, the learned counsel for the first respondent relied upon a judgment of the Honourable Supreme Court dated 25.07.2022 in the case of Mahanadi Coalfields Ltd. and Another Vs. M/s.IVRCL AMR Joint Venture rendered in Civil Appeal No.4914 of 2022 (Arising out of SLP (C) No.1098 of 2020), in support of his contention that there is no arbitration agreement between the applicant / petitioner and the first respondent with regard to the subject matter of the dispute.

25. Relying upon the aforesaid Judgment of the Honourable Supreme Court, the learned counsel for the first respondent would submit that since there is no written agreement to refer either present or future disputes to arbitration, Arb.O.P.(Com.Div) No.302 of 2023 filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court is not maintainable.

**26. Discussion:**

This Court will have to first decide whether this Court is



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empowered to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 in respect of the subject matter of the dispute.

Only if this Court comes to the conclusion, that there exists an arbitration clause, the need to adjudicate the Section 9 application viz., O.A.No.267 of 2023 will arise. Therefore, this Court is first adjudicating the Section 11 petition viz., Arb.O.P.(Com.Div) No.302 of 2023.

27. Kompetenz-kompetenz principle i.e., allowing the arbitral tribunal to rule on its own jurisdiction, is one of the fundamental principles of arbitration. In Indian arbitration law, this is captured in Section 16 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "*Act*". Kompetenz-kompetenz doctrine is also emphasised in the Judgment of the Honourable Supreme Court in the case of Indian Farmer Fertilizer Cooperative Limited Vs. Bhadara Products reported in 2018 (2) SCC 534 hereinafter referred to as the IFFCO judgment. In the said Judgment, the Honourable Supreme Court has held that 'Jurisdiction' mentioned in Section 16 has reference to three things:

- a) existence of a valid arbitration agreement;
- b) whether arbitral tribunal is properly constituted; and



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28. This controversy was laid to rest to an extent by a Three Judge Bench of the Honourable Supreme Court in the case of *Vidya Drolia v. Durga Trading Corporation* reported in *2021 (2) SCC 1*. In this case,





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the Honourable Supreme Court examined the question of who decides

non-arbitrability. The Court found that issues of non-arbitrability can be raised at three stages, viz.,

a) Before the court on an application for reference under Section 11 of the Act or for stay of pending judicial proceedings and reference under Section 8 of the Act;

b) Before the arbitral tribunal during the course of the arbitration proceedings (i.e., under Section 16 of the Act);

c) Before the court at the stage of the challenge to the award or its enforcement.

29. The Honourable Supreme Court in *Vidya Drolia* case went on to examine the jurisdiction of the court to scrutinize non-arbitrability at the first look or the referral stage under Section 8 (i.e., at the time of reference to arbitration where an arbitration agreement exists) or Section 11 (i.e., at the time of appointment of arbitrators). The Honourable Supreme Court held that a court in exercise of its jurisdiction under Section 8 or Section 11 of the Act is only required to take a *prima facie* view on the issue of arbitrability and not a final view as the arbitral



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tribunal is empowered to decide this issue under Section 16.

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30. The Honourable Supreme Court elaborated that a *prima facie* examination is not a full review but a primary first review to weed out manifestly and ex-facie non-existence and invalid arbitration agreements and non-arbitrable disputes. The Honourable Supreme Court observed that at the stage of reference, the court should not decide debatable questions of facts, as referral proceedings are preliminary and summary and not a mini trial.

31. The Honourable Supreme Court has also observed that while in some cases the court may, to prevent wastage of public and private resources, exercise judicial discretion to conduct an intense yet summary *prima facie* review, it must remain conscious that it is to assist the arbitration procedure and not usurp jurisdiction of the arbitral tribunal.

32. The Honourable Supreme Court held that the Court must balance the twin objectives of avoiding arbitration-obstructing tactics at referral stage, and protecting parties from being forced to arbitrate when



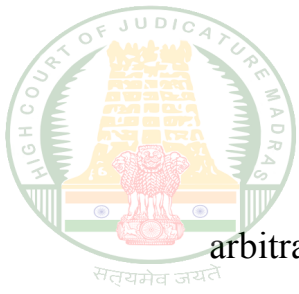
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a matter is clearly non-arbitrable.

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33. Therefore, it is clear that at the referral stage, a party seeking reference to arbitration only needs to demonstrate that *prima facie*, a valid arbitration agreement is in existence. It follows that a party seeking to oppose the arbitration has to discharge the heavy burden of showing that even *prima facie*, an arbitration agreement cannot be said to be in existence. If such party cannot satisfy the court of the same, the matter has to be necessarily referred to the arbitral tribunal for full trial. Such limited jurisdiction vested with the court is necessary at the pre-referral stage to appropriately balance the power of the arbitral tribunal with judicial interference.

34. The Honourable Supreme Court in both the IFFCO Judgment and Vidya Drolia Judgment referred to supra has clearly emphasized the primary role of the arbitral tribunal in determining inter-alia the existence and validity of an arbitration agreement and the arbitrability of the subject matter of dispute. In the Vidya Drolia Judgment, the Honourable Supreme Court clearly set out boundaries for the extent of scrutiny of an



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arbitration agreement to be done by Courts at the referral stage, i.e.,

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when dealing with a petition under Section 8 or Section 11 of the Act.

Pursuant to the 2015 amendment of the Act, it is clear from the principles laid down by the Honourable Supreme Court in the Vidya Drolia Judgment, curtailing the power of the court, ought to be extended to such cases of Section 9 petitions filed before the commencement of arbitration as well.

35. Section 7 of the Arbitration and Conciliation Act, 1996, defines an arbitration agreement and it reads as follows:

***"7. Arbitration agreement.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.***

***(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.***



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(3) *An arbitration agreement shall be in writing.*

(4) *An arbitration agreement is in writing if it is contained in—*

(a) *a document signed by the parties;*

(b) *an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or*

(c) *an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

(5) *The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."*



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36. As seen from Section 7 (5) of the Act, reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, if the contract is in writing and the reference to such as to make it part of the contract.

37. The Honourable Supreme Court in the decision relied upon by the learned Senior Counsel for the applicant / petitioner viz., ***Unissi (India) Private Limited Vs. Post Graduate Institute of Medical Education and Research*** reported in ***2009 (1) SCC 107*** has also held that if the contract is in writing and a reference is made to a document containing an arbitration clause as part of the transaction, it would mean that the arbitration agreement is part of the contract.

38. The Honourable Supreme Court in the case of ***Nimet Resources Inc. Vs. Essar Steels Ltd.*** reported in ***2000 (7) SCC 497*** has also held as follows:

"If the contract is in writing and a reference is made to a document containing an arbitration clause as part of the transaction, it would mean that the arbitration agreement is part of the contract. Therefore, in a



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matter where there has been some transaction between the parties and the existence of the arbitration agreement is in challenge, the proper course for the parties is to thrash out such question under Section 16 of the Act and not under Section 11 of the Act".

39. In *Bangalore Electricity Supply Company Limited (BESCOM) vs. E.S. Solar Power Pvt. Ltd.*, reported in *2021 SCC OnLine SC 358*, decided on 03.05.2021, the Honourable Supreme Court while explaining the scope of "interpretation of contracts" held that it is not the duty of the Court to delve deep into the intricacies of human mind. The guiding principles with regard to interpretation of contracts laid down by the Honourable Supreme Court in the aforesaid decision is as follows:

a) In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that the clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the



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other in accordance with the settled principles. If one meaning is more in accordance with what the Court considers to the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former and not the later;

b) The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract.

c) Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause.

40. As a sequitur to the above discussion, it can be conclusively held that whenever there is a doubt as to whether there is a valid arbitration agreement between the parties, the Court while deciding an application under Section 11 of the Arbitration and Conciliation Act has to refer the dispute to the arbitration by applying the Kompetenz-kompetenz principle.





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**WEB COPY** 41. In the case on hand, the dispute has arisen in the "pre-tendering stage". Volume - I A " Invitation to bid" is the governing document, the applicant / petitioner and the first respondent are bound by. Volume - I A of the tender document, without any ambiguity under clause 1.0, directs the applicant / petitioner to visit the website **www.nlcindia.in/www.procure.nlcindia.in** or Central Public Procurement Portal (CPPP) of Government of India website **www.eprocure.gov.in** or contract. Clause 1.0 of the agreement reads as follows:

*"Note:*

*3. for further details please visit our website:*

***www.nlcindia.in/www.procure.nlcindia.in** or Central Public Procurement Portal (CPPP) of Government of India website: **www.eprocure.gov.in** or contract:*

*The Chief General Manager / Contracts,*

*Corporate Office, NLC India Ltd.,*

*Block - 1, Neyveli - 607 801.*

*Phone: 04142-212308/ 251620*



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*E-mail ID: corporate.conts@nlcindia.in, gmconts@gmail.com"*

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42. On accessing the portal, i.e., **www.nlcindia.in/www.procure.nlcindia.in**, the following links and documents appear:

*"a. eprocure.gov.in*

*b. eprocure.gov.in/cppp*

*c. eprocure.gov.in/cppp/sitemap*

*d. eprocure.gov.in/cppp/instruction\_display*

*e. doe.gov.in/procurement-policy-divisions*

*f. doe.gov.in/procurement-policy-divisions?page=2*

***g.vii.doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Works\_0.pdf"***

43. When the above links are accessed, they direct the person to the manual for public procurement policy (Make in India) and manual for procurement of works (updated in June, 2022). In the manual, under clause 6.8, the dispute resolution mechanism has been referred to. Clause 6.10 clearly refers to Arbitration and clause 6.10.1 refers to arbitration



and dispute resolution.

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44. Clause 6.10 and clause 6.10.1 in the aforesaid manual are extracted hereunder:

**"6.10 Arbitration:**

*If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. All questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or*



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*abandonment thereof shall be referred to adjudication through arbitration. Please refer to Appendix 3 for further details of the Arbitration Act.*

*It is therefore essential that the project organisation of the procuring entity and engineer be aware of potential arbitration clauses and ensure that crucial demonstration including site records, quantity records, handover of site, etc., are recorded and secured properly for future use."*

#### ***"6.10.1 Arbitration and dispute resolution***

*i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration / litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.*

*ii) Arbitration / Court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there*



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*are high chances of winning in the Court / higher Court. There is a perception that such appeals etc., are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / Court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.*

*(iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / Court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration / Court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to*



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*accepting the arbitration / Court award.*

*iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the Government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency, etc., recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.*

*(v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and / or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final Court order going against the procuring entity."*



WEB COPY 45. The tender document Volume - I A, clause 3.0 Public

Procurement Policy (Make in India) is extracted as follows:

1. *"3.0 Public Procurement Policy (Make in India)*

*i. The bidder shall take note of the following as per Department for promotion of Industry and Internal Trade (formerly, Department of Industry policy and promotion), Ministry of Commerce and Industry, Government of India, Public Procurement (Preference to Make in India) order 2017 - Revision: Dt: 16.11.2020 and its amendments and confirm compliance to the requirements in this regard MoP vide Order No.:A-1/2021-FSC-Part(5), dt:16.11.2021 in respect of Power Sector, which is in supersession to all the earlier Orders issued by MoP in this regards as indicated below."*

46. In the above clause, *Order No.:A-1/2021-FSC-Parts(5), dt:16.11.2021*, clause 25 reads as follows:

*" Arbitration shall be the dispute resolution mechanism for any dispute arising out of the Tender."*



**WEB COPY** 47. Under the manual for Public procurement policy (Make in India) and *Order No.:A-1/2021-FSC-Parts(5), dt:16.11.2021* in respect of power sector, it states that any dispute arising out of the pre-tendering stage (Volume - I A) of the tender document, the appropriate authority for the dispute arising during the pre-tendering stage is through Arbitration and Conciliation Act, 1996 and this is the governing Dispute Resolution Mechanism for the dispute on hand.

48. The draft contract which was made available to all bidders including the applicant / petitioner by the first respondent also discloses the existence of an arbitration clause. The relevant clauses in the draft contract are extracted hereunder:

***" 10.33.4 Arbitration:***

***10.33.4.1 Between NLCIL & another***

***Central PSE***

*In the event of any dispute or difference, relating to the interpretation and application of the provisions of the Contracts, such*





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*dispute or difference shall be referred by either party for resolution through Administrative Mechanism for Resolution of CPSE's Disputes (AMRCD) as mentioned in DPE OM No.4(1) 2013-DPE-(GM)/FTS-1835 dated 22.05.2018 and its amendments issued from time to time.*

**10.33.4.2 For other Contractors**

*Arbitration shall be applicable only for the dispute(s) involving claims from Rs.25 Lakhs to Rs.20 Crores.*

*For the dispute(s) involving claims below Rs.25 Lakhs and above Rs.20 Crores:*

*The parties mutually agree that dispute(s) / issue(s) involving claims below Rs.25 Lakhs and above Rs.20 Crores shall not be subject matter of Arbitration.*

*The claims below Rs.25 Lakhs are subject to the jurisdiction of the respective Civil Court having jurisdiction over the place of works /*



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*supply / service.*

*The claims above Rs.20 Crores are subject to the exclusive jurisdiction of the Court situated at Chennai.*

*The above provisions shall supersede provisions relating to the Arbitration, governing Law & Jurisdiction mentioned elsewhere in the tender documents.*

*a) In case of failure to resolve the dispute through conciliation, then within a further period of 30 days, the dissatisfied party may require by a notification that the dispute be referred to arbitration in the manner hereinafter provided. Such a notification shall be in writing and it shall be duly served on the other party. Failure to invoke the arbitration within the time schedule shall debar the party from seeking reference to arbitration.*

*b) Except as otherwise provided in this clause, any dispute arising out of or relating*



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*to this agreement, or the breach, termination or validity thereof, shall be finally settled by Arbitration in accordance with the Arbitration and Conciliation Act, 1996 (the "Act"). The arbitration shall be held at Chennai, Tamil Nadu. The arbitration proceedings shall be conducted, and the award shall be rendered in English. The award shall state the reasons upon which it is based.*

*c) There shall be three arbitrators of whom each party shall appoint one. The party requesting that the dispute be referred to arbitration shall, within 30 days of the notification in terms of Clause 10.32 (ii) (a), appoint an arbitrator as also call upon the other party to appoint an arbitrator within 30 days. The two arbitrators so appointed shall, within 30 days of the date on which the second of them is appointed, agree on the third arbitrator who shall act as the presiding arbitrator of the tribunal.*



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d) *The agreement and the rights and obligations of the parties, shall remain in full force and effect pending the award in any arbitration proceedings. Supplies and / or services under the contract shall, if reasonably possible, continue during arbitration proceedings.*

e) *For the purposes of this clause, the term 'dispute' shall include a demand or difference of any kind whatsoever, arising out of the Contract and respecting the performance of the contract, whether during the contract period including extensions if any, or after completion, and whether before or after termination, abandonment or breach of the Contract (except as to any matter, the decision of which is specifically provided for in any of these conditions).*

f) *The party, in whose favour the award is passed, shall be entitled to recover the entire cost of Arbitration from the other party. The*



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*Arbitration shall indicate the above in their award  
clearly."*

49. The first respondent claims that since the subject bank guarantee is for a sum of Rs.21,88,12,000/- which exceeds Rs.20 Crores, the dispute is not an arbitrable dispute. But, this Court cannot adjudicate on the said contention at the stage of Section 11 as one does not know what will be the nature and quantum of claim to be made by the applicant / petitioner against the first respondent in the arbitration. Further, the draft contract cannot also be accepted as the terms and conditions of the arbitration clause as per the draft contract is yet to be accepted by the applicant / petitioner as only after the contract is awarded to the first respondent and the first respondent agrees with the terms and conditions of the arbitration clause contained in the draft contract by signing the same, the limit for reference to arbitration shall become applicable to the applicant / petitioner.

50. Volume - I B of the tender document stipulates Arbitration and Conciliation as the dispute resolution mechanism for any dispute arising



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at the post-tendering stage of the contract. The second part of the tender document satisfies the guidelines and the rules as prescribed in the manuals for public procurement policy (Make in India) and *Order No.:A-1/2021-FSC-Parts(5), dt:16.11.2021* in respect of power sector.

51. Thus, after giving due consideration to the various terms and conditions which are applicable to the subject tender, this Court is of the *prima facie* view that even for the pre-tendering stage, arbitration is the dispute resolution mechanism for the adjudication of the disputes between the applicant / petitioner and the first respondent. While deciding application under Section 11 of the Arbitration and Conciliation Act, 1996, as held by the Honourable Supreme Court in the *Vidya Drolia* case referred to supra, this Court will have to express only its *prima facie* view with regard to the existence of an arbitration clause. This Court, after giving due consideration to the documents placed on record, is of the *prima facie* view that there exists a valid arbitration clause and the intention of the parties to the dispute is also to go for arbitration.



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**WEB COPY** 52. The applicant / petitioner has sent a letter dated 08.05.2023 to the first respondent seeking for a meeting to resolve the dispute / difference by mutual consultation before embarking upon Arbitration. The applicant / petitioner wanted a discussion so that the dispute could be amicable resolved. In response to the said request made by the applicant / petitioner, the first respondent through its counsel, reiterated that there is no arbitration clause in the pre-tender stage and in the absence of the same, invocation of any conciliation meeting or arbitration would be improper and unsustainable.

53. The applicant / petitioner has also nominated a retired Judge of this Court as the arbitrator through its arbitration invocation notice dated 08.06.2023. The first respondent has also sent a reply on 21.06.2023, reiterating that, there is no arbitration clause and the question of appointment of an arbitrator is unsustainable in law. Only after the Section 9 application was filed, Arb.O.P.(Com.Div) No.302 of 2023 has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.



**WEB COPY** 54. While deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996, as held in *Vidya Drolia* case referred to supra, this Court is only required to take a *prima facie* view on the issue of arbitrability and not a final view as the arbitral tribunal is empowered to decide this issue under Section 16. At the Section 11 stage, this Court should not decide debatable questions of facts as referral proceedings are preliminary and summary and a mini trial is not conducted. At the referral stage, a party seeking reference to arbitration only needs to demonstrate that *prima facie*, a valid arbitration clause is in existence. It follows that a party seeking to oppose the reference to arbitration has to discharge the heavy burden of showing that even *prima facie* that an arbitration agreement cannot be said to be in existence. If such party cannot satisfy the Court of the same, the matter has to be necessarily referred to the arbitral tribunal for full trial. Such limited jurisdiction vested with the Court is necessary at the pre-reference stage to appropriately balance the power of the arbitral tribunal with judicial interference.





WEB COPY 55. Whenever a doubt exists as to whether there exists a valid arbitration agreement between the parties, the parties will have to be referred to arbitration under Section 11 of the Arbitration and Conciliation Act. All debatable questions of facts, with regard to the existence of a valid arbitration agreement are left open for the arbitral tribunal to adjudicate under Section 16 of the Arbitration and Conciliation Act, 1996. In the IFFCO Judgment reported in 2018 (2) SCC 534 referred to supra, it has been made clear that the jurisdiction of the arbitral tribunal mentioned in Section 16 has reference to three things

- a) existence of a valid arbitration agreement;
- b) whether arbitral tribunal is properly constituted; and
- c) whether matters submitted to arbitration are in accordance with the arbitration agreement.

Therefore, it is clear that the existence of a valid arbitration agreement can be adjudicated by the arbitral tribunal under Section 16 of the Arbitration and Conciliation Act, 1996.



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**WEB COPY** 56. For the foregoing reasons, this Court is of the *prima facie* view that there exists an arbitration clause in the tender document for the pre-tendering stage as well. The applicant / petitioner, having submitted its bid and who has raised a dispute, is entitled to file this application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for reference to the said dispute to the arbitration by appointment of an arbitrator by this Court. Therefore, Arb.O.P.(Com.Div) No.302 of 2023 filed under Section 11 of the Arbitration and Conciliation Act, 1996, has to be allowed as prayed for.

57. Having decided the Section 11 application in favour of the applicant / petitioner, this Court will now have to examine as to whether the applicant in O.A.No.267 of 2023 is entitled to obtain an order of interim injunction under Section 9 of the Arbitration and Conciliation Act, 1996, to restrain the first respondent from invoking / encashing the bank guarantee given by the applicant for a sum of Rs.21,88,12,000/-.



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**WEB COPY** 58. Bank guarantee is an independent contract. The beneficiary, under the bank guarantee for a sum of Rs.21,88,12,000/- given by the applicant / petitioner, is the first respondent in O.A.No.267 of 2023.

**59. The following are the undisputed facts:**

a) The tender for which the applicant / petitioner furnished a bank guarantee for a sum of Rs.21,88,12,000/- in favour of the first respondent was cancelled;

b) The first respondent, who is the beneficiary under the bank guarantee has not made any claim of having suffered loss on account of the cancellation of the tender against the applicant / petitioner. In the counter affidavits filed by the first respondent before this Court, they have also not pleaded that any amount is due and payable by the applicant / petitioner to the first respondent due to the cancellation of the tender;

c) The tender has been cancelled by the first respondent. The entire bank guarantee amount of Rs.21,88,12,000/- submitted by the applicant / petitioner, as part of the tender requirements, is sought to be invoked by



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the first respondent, even before quantifying the claim and giving break-up details of the losses if any suffered by the first respondent;

d) Even without quantifying the claim, the first respondent has invoked the bank guarantee;

e) The first respondent has invoked the bank guarantee of Rs.21,88,12,000/- even before awarding the contract in favour of the applicant / petitioner.

60. It is settled law as laid down by various decisions of the Honourable Supreme Court and the High Courts, which includes the decisions relied upon by the learned counsel for the applicant / petitioner, that an injunction can be granted from invocation of the bank guarantee only on the ground that the applicant / petitioner has established egregious fraud or irretrievable injustice and in certain cases, doctrine of proportionality is also treated as a special equity exception for the grant of injunction from invocation of bank guarantee.

61. In the case on hand, we need to now examine as to whether the applicant / petitioner has established any of the well settled principles for



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the grant of an order of injunction from invocation of the bank guarantee.

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The first respondent has invoked the bank guarantee for a sum of Rs.21,88,12,000/- given by the applicant / petitioner even before the contract could be awarded by the first respondent in favour of the applicant / petitioner. The bank guarantee value is huge i.e., Rs.21,88,12,000/-.

62. According to the first respondent, the applicant / petitioner had submitted a fabricated letter / certificate dated 20.06.2021, alleged to have been issued by M/s.Ajmer Vidyut Vitran Nigam Limited (AVVNL), henceforth, referred to as "*AVVNL*" to fulfil the tender conditions while submitting its bid. However, the same has been categorically disputed by the applicant / petitioner. The applicant / petitioner had received a communication from the first respondent dated 27.03.2023 informing them that the letter / certificate dated 20.06.2021 issued by AVVNL is a fabricated document. Immediately, on 28.03.2023, a reply was sent by the applicant / petitioner to the first respondent, seeking time to clarify with regard to the contentions of the first respondent in the aforesaid communication dated 27.03.2023. The applicant / petitioner sought time



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to clarify on the ground that it had to consult the other consortium partners and only thereafter, it is possible to submit its clarification with regard to the genuineness of the certificate dated 20.06.2021 issued by AVVNL. The applicant / petitioner had sought for reasonable time to submit their reply.

63. The applicant / petitioner had thereafter, issued a letter dated 05.04.2023 to M/s. U-Solar Clean Energy Solutions Private Limited, seeking clarification with regard to the response given by AVVNL, since M/s. U-Solar Clean Energy Solutions Private Limited was the technical partner. On 06.04.2023, the applicant / petitioner was given to understand that M/s. U-Solar Clean Energy Solutions Private Limited had written to AVVNL seeking clarification as regards the letter dated 20.06.2021, which is the subject matter of the dispute. On 06.04.2023, AVVNL had responded to M/s. U-Solar Clean Energy Solutions Private Limited that as per the records available with it, M/s.Kanchan India Limited had an EPC agreement for 12 MW AC Solar Power Plant and the same had been executed on 05.01.2021 and further enhanced to 16 MW. It was also clarified by AVVNL that the 16 MW Solar Power Plant



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had been duly installed and commenced successfully by M/s. U-Solar

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Clean Energy Solutions Private Limited. Therefore, on a *prima facie*

consideration, the letter dated 20.06.2021 issued by AVVNL to

M/s.Kanchan India Limited which is the basis for the first respondent to

invoke the bank guarantee on the ground that the said certificate is a fully

fabricated document is highly unreliable since the very same organisation

viz., AVVNL had responded subsequently to M/s. U-Solar Clean Energy

Solutions Private Limited on 06.04.2023 stating that as per the records

available with them, M/s.Kanchan India Limited had a EPC agreement

for 12 MW AC Solar Power Plant and the same had been executed on

05.01.2021 and further enhanced to 16 MW. It was also clarified that 16

MW Solar power plant had been duly installed and commenced

successfully by M/s. U-Solar Clean Energy Solutions Private Limited. If

the subsequent letter of AVVNL dated 06.04.2023 addressed to M/s. U-

Solar Clean Energy Solutions Private Limited is accepted to be a genuine

letter, the contention of the first respondent that the applicant / petitioner

had submitted fabricated documents along with its tender fabricated

document viz., letter dated 20.06.2021 issued by AVVNL is a fabricated

document may not be correct.



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**WEB COPY** 64. On 08.04.2023, M/s. U-Solar Clean Energy Solutions Private

Limited has also sent a clarification to the applicant / petitioner along with the copy of the reply given by AVVNL stating that the letter dated 20.06.2021 issued by AVVNL had been circulating for which there are no official records available with AVVNL. The applicant / petitioner on 08.04.2023 has also written a letter to M/s. U-Solar Clean Energy Solutions Private Limited, seeking clarification as regards the installation by M/s. U-Solar Clean Energy Solutions Private Limited. The applicant / petitioner has also sent a follow-up letter on 06.06.2023 to AVVNL seeking for reply to the earlier letter dated 21.04.2023. On 15.06.2023, AVVNL responded to the letter of the applicant / petitioner, clarifying that the letter dated 20.06.2021 which is circulating, there was no record for the same in its Office. However, AVVNL confirmed the existence of the solar power plant at M/s.Kanchan India Limited, Bilwara, being correct and that the same was installed by M/s. U-Solar Clean Energy Solutions Private Limited and presently is in working condition.





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WEB COPY 65. On a *prima facie* consideration, this Court is of the considered view that even before the applicant / petitioner could seek clarification on the alleged bogus letter dated 20.06.2021, the first respondent was attempting to unduly enrich itself by invoking the bank guarantee for the huge sum of Rs.21,88,12,000/- without giving any opportunity to the applicant / petitioner to put forth its explanation with factual documents.

66. The applicant / petitioner has also pleaded in the affidavit filed in support of this application that irretrievable injury will be caused to them, if the bank guarantee is invoked by the first respondent.

67. Normally, Courts should be slow in granting injunction against invocation of bank guarantee, primarily for the following reasons:

a) The contract of bank guarantee is an independent contract between the banker and the creditor and therefore, operates independent of any disputes that may have arisen between the creditor and the principal debtor;



WEB COPY b) Commitment of banks must be honoured as far as possible without interference to Courts: Else, trust in Commerce would be irreparably damaged.

68. Therefore, only in exceptional cases, where the following grounds have been satisfied by the applicant / petitioner, injunction against invocation of bank guarantee is granted by Courts:

a) Egregious fraud relating to the bank guarantee;

b) Special equities, that is circumstances which may lead to irretrievable injustice; the principal debtor, however, needs to make a specific plea in this regard and moreover is required to *prima facie* establish by strong evidence that there is a triable issue. Doctrine of proportionality also constitutes a special equity exception against the invocation of unconditional bank guarantees.

69. This Court had an occasion to decide the relevance of the Doctrine of proportionality, while deciding an application seeking for an injunction from invoking a bank guarantee. The said decision rendered



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by this Court in the case of ***Chennai Metro Rail Limited Vs.***

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***M/s. Transtonnelstroy - Afcons (JV) in C.M.A.No.1773 of 2021*** has

elaborately discussed the Doctrine of proportionality and its applicability to injunction relief sought against invocation of bank guarantee. After giving due consideration to the decisions rendered by the Honourable Supreme Court in the case of ***Standard Chartered Bank Ltd. Vs. Heavy Engineering Corp.*** reported in ***2019 SCC online SC 1638*** and ***Hindustan Construction Co. Ltd. Vs. State of Bihar*** reported in ***1999 (8) SCC 436*** which dealt with cases pertaining to parties seeking injunction from invocation of bank guarantee held that injunction can be granted from invocation of bank guarantee only when any of the following conditions are satisfied:

- a) Egregious fraud has been established against the beneficiary under the bank guarantee;
- b) Irretrievable harm / injustice will be caused if the bank guarantee is invoked by the beneficiary;
- c) The beneficiary has given a go-by to the terms of the bank guarantee;
- d) Proportionality also constitutes a special equities exception



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against invocation or encashment of unconditional bank guarantees, if

there is a huge difference between the actual outstanding dues which is less and the value of the bank guarantee which is more.

70. In the case on hand, the bank guarantee given by the applicant is for a huge sum of Rs.21,88,12,000/-. Admittedly, no contract was awarded to the applicant / petitioner by the first respondent pursuant to the tender and the dispute has arisen in the pre-tendering stage itself. The applicant / petitioner was the only bidder in the tender called for by the first respondent and the tender itself has been called off.

71. The applicant / petitioner has pleaded irretrievable injury in the affidavit filed in support of this application as they have pleaded that if the bank guarantee for the huge sum, if invoked, they will be put to irreparable injury. The first respondent has also not disclosed in their counter affidavits, the details of the losses suffered by them on account of their alleged claim that the applicant / petitioner had submitted a fabricated document for the purpose of satisfying the tender conditions. The value of the contract if awarded to any bidder will be a huge one and



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the bank guarantee amount to be given along with the tender documents by any bidder is also for a huge sum of Rs.21,88,12,000/- for 200 MW.

Even though, the applicant / petitioner need not be put on notice by the first respondent before invoking the bank guarantee, this Court is of the considered view that being a huge sum and that too when the contract has not been awarded to the applicant / petitioner, the invocation of the bank guarantee, even before the adjudication of the arbitral proceedings, will certainly cause the applicant, irretrievable harm / injustice. The Doctrine of proportionality, which is a special equity exception for granting injunction from invoking the bank guarantee also comes into play as the first respondent may not have suffered a huge loss equivalent to the value of the bank guarantee which is for a sum of Rs.21,88,12,000/-.

72. The relief granted by Courts under Section 9 of the Arbitration and Conciliation Act, 1996 is a discretionary relief. It is settled law as laid down by the Honourable Supreme Court and the High Courts that the requirements of

a) *prima facie* case;



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b) balance of convenience and

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c) irreparable hardship

also applies to Section 9 application filed under the Arbitration and Conciliation Act, 1996.

73. Being a huge amount, if the first respondent is allowed to invoke the bank guarantee, even before the quantification of the claim, the applicant / petitioner will certainly be put to irreparable hardship. Irretrievable injustice will also be caused to the applicant if the bank guarantee for the huge sum is allowed to be invoked by the first respondent as the applicant / petitioner has categorically pleaded that they have not submitted any fabricated document. In support of their stand, they have also produced a letter dated 15.06.2023 sent by AVVNL. The dispute, whether the applicant has submitted fabricated document or not, can be adjudicated only by the arbitral tribunal and this Court at this stage, based on the letter produced by the first respondent, cannot give a categorical finding that the applicant / petitioner had submitted a fabricated document while submitting its tender. When both parties to the dispute have produced letters in support of their respective



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stand and there is no conclusive evidence available on record to prove that the applicant / petitioner has submitted a fabricated document, while submitting its tender, this Court must certainly protect the interest of the applicant / petitioner by granting an order of interim injunction pending arbitration to restrain the first respondent from invoking the bank guarantee for a sum of Rs.21,88,12,000/-. *Prima facie* case has been made out by the applicant / petitioner for the grant of interim injunction as prayed for in this application. Irretrievable injustice will be caused to the applicant / petitioner, if the bank guarantee is invoked by the first respondent. The balance of convenience is also in favour of the applicant / petitioner for the grant of injunction as prayed for in this application.

74. For the foregoing reasons, since the applicant / petitioner has satisfied that irretrievable injustice will be caused to them and has also satisfied the special equities exception of proportionality for the grant of an order of injunction from invocation of bank guarantee, this Court is inclined to allow this application by granting an order of injunction against the first respondent from invocation of the bank guarantee as prayed for in this application.



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**WEB COPY** 75. Accordingly, O.A.No.267 of 2023 is allowed as prayed for by granting an order of injunction restraining the first respondent from invoking the bank guarantee for a sum of Rs.21,88,12,000/-, pending disposal of the arbitration.

76. In the result, Arb. O.P.No.302 of 2023 and O.A.No.267 of 2023 are allowed as prayed for by issuing the following directions:

(a) Hon'ble Dr.Justice S.Muralidhar, Former Chief Justice of Orissa High Court, having office at No.16, First Floor, Sadhna Enclave, Panchsheel Park, New Delhi - 110 017 (Mobile No.98727 27986) is appointed as the sole Arbitrator to adjudicate the dispute between the applicant / petitioner and the first respondent arising out of the invitation to tender for setting up of 500 MW / ISTS connected Solar Power Project on PAN India basis with operation and maintenance;

(b) The Arbitrator shall be paid his remuneration / fees either as per the mutual agreement between the parties or as per the 4th schedule of the Arbitration and Conciliation Act, 1996;





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(c) Both the parties shall equally share the arbitrator's fees;

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(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

11.09.2023

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

ab

***Note: Issue Order Copy Today (i.e., on 11.09.2023)***



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**ABDUL QUDDHOSE, J.**

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**Pre-delivery order in**

**Arb.O.P.(Com.Div) No.302 of 2023**

**and**

**O.A. No.267 of 2023**

11.09.2023