



\$~35

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

+ **CS(COMM) 282/2022**

MB POWER (MADHYA PRADESH) LIMITED Plaintiff

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Rishi Agrawala, Ms. Niyati
Kohli, Mr. Pratham Vir Agarwal, Mr.
Manavi Agarwal and Mr. Akshat,
Advocates

versus

STATE BANK OF INDIA & ORS. Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **29.04.2022**

I.A. 6630/2022 (exemption)

Allowed, subject to all just exceptions.

I.A. 6631/2022 (under Section 149 CPC)

1. Learned counsel for the plaintiff submits that the deficient court fees has already been applied for and a sum of Rs. 15,10,000/- has been deposited with the Stock Holding Corporation of India Ltd. for provision of the Court Fees. Receipt of deposit has been filed.

2. The court fees be filed within two days of the same being made available by the Stock Holding Corporation to the plaintiff.

CS(COMM) 282/2022

1



3. The application is disposed of.

CS(COMM) 282/2022

4. Plaint be registered as a suit.

5. Issue summons to the defendants returnable on 06.05.2022.

I.A. 6629/2022 (under Order 39 Rules 1 & 2 CPC)

6. Plaintiff has filed the subject suit for declaration and mandatory injunction thereby directing defendant no. 2 – PTC India Ltd. to deliver the Performance Bank Guarantee in the sum of Rs. 15 crores issued by defendant no. 1 at the request of the plaintiff in favour of defendant no. 2.

7. A power purchase agreement was entered into between the plaintiff and defendant no. 2.

8. As per the plaintiff, plaintiff was supposed to provide a performance security to defendant no. 2 within 15 days of the date of the agreement and thereafter defendant no. 2 was to comply with certain condition precedent prior to the commencement of the operation of the contract.

9. One of the conditions; being issuance of a letter of credit in accordance with Article 12.1 of the agreement. Clause 12.1.1 stipulated that no later than 30 days prior to the likely date of the appointed date, defendant no. 2 was to provide to the plaintiff an unconditional revolving and irrevocable letter of credit for an amount



equivalent to 20% of the annual capacity charge.

10. Learned Senior Counsel for the plaintiff submits that the subject performance bank guarantee was furnished on 03.11.2021 and consequently the defendant was to provide the letter of credit, no later than 03.12.2021.

11. It is submitted that the defendant no. 2 failed to provide the letter of credit by 03.12.2021, however, provided one on 19.01.2022 which was not as per the prescribed format prescribed in Schedule-C of the agreement.

12. Subsequently on 01.02.2022 an alternative letter of credit was furnished which was also not in the specified format. Consequently there was a deemed termination of the contract on 25.02.2022 because of failure of the defendant no. 2 to comply with the conditions specified therein.

13. Learned Senior Counsel for the plaintiff submits that by a letter dated 19.04.2022 plaintiff communicated to defendant no. 2 the deemed termination and requested defendant no. 2 to release/return the performance security as the agreement stood terminated. He submits that till date there is no response received from the defendant no. 2.

14. Learned Senior Counsel further submits that defendant no. 1 – State Bank of India has refused to discharge the liability of the plaintiff and withhold the payment unless there is a



restraint/injunction from a competent/appropriate court.

15. Learned senior counsel submits that as the agreement stood terminated on account of breach on the part of defendant No. 2, there is no question of any performance or invocation of the performance bank guarantee. He further under instructions submits that till date there has been no invocation of the performance bank guarantee.

16. Advance service of the suit has been made on the defendants, however, none appears for the defendants.

17. I am satisfied that the plaintiff has made out a prima facie case for grant of an ex parte ad-interim injunction and balance of convenience is in favour of the plaintiff and in case an ex-parte ad-interim injunction is not granted, plaintiff is likely to suffer irreparable loss and injury.

18. Accordingly, till the next date of hearing, defendant no. 2 is restrained from invoking and defendant no. 1 is restrained from encashing the performance bank guarantee.

19. Issue Notice returnable on 06.05.2022. *Dasti* in addition.

20. Order be communicated to the parties by the Court Master by email.

SANJEEV SACHDEVA, J

APRIL 29, 2022

‘rs’

