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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 592/2021**
BEUMER INDIA PVT. LTD

..... Plaintiff

Through: Mr. Amit Punj & Mr. Archit Arora,
Advocates.

versus

THAUMAS INFRASTRUCTURE LTD & ANR. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **06.09.2022**

CS(COMM) 592/2021

Summons in this suit were issued on 24.11.2021; when time was also granted to the defendants to file their written statements.

2. Defendant No. 1 has been served with summons as recorded in order dated 10.02.2022 and defendant No. 2 stood served on 23.03.2022 as recorded in order dated 18.04.2022 made by the learned Joint Registrar.
3. However, till date, the defendants have neither been represented in the matter on any date; nor has any written statement or reply to the interim application been filed by the defendants.
4. Accordingly, this court is satisfied, that having been duly served in the matter, the defendants have deliberately chosen not to be represented and have also not filed any written statements/replies.
5. The defendants are accordingly set *ex-parte*.
6. Re-notify on 09th December 2022.



I.A. 15232/2021

7. By way of this application filed under Order XXXIX Rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 the plaintiff seeks an order of injunction restraining defendant No. 1 from invoking and encashing the performance bank guarantees, the details whereof are given in para 8 of the plaint, as extended from time-to-time; and also an order restraining defendant No. 2 from releasing money against the said performance bank guarantees, till the pendency of the suit. The details of the subject performance bank guarantees are extracted below:

Srl.	PBG No.	Date	Bank	Amount
1)	796BGG1300080	28.01.2013	Deutsche Bank AG	36,00,000
2)	796BGG1300200	27.02.2013		45,05,000
3)	796BGG1300751	27.06.2013		16,20,000
4)	796BGG1300752	27.06.2013		16,20,000
5)	796BGG1301051	13.09.2013		36,00,000
6)	796BGG1400143	28.01.2014		5,00,000
7)	796BGG1400250	18.02.2014		16,50,000
8)	796BGO1400281	20.02.2014		45,05,000
9)	796BGG1400494	25.03.2014		16,50,000

8. Mr. Amit Punj, learned counsel appearing for the plaintiff submits that the bank guarantees were issued by the plaintiff in favour of defendant No. 1 through defendant No. 2, as part of its obligations



under contract dated 10.09.2013, whereby defendant No. 1 had issued certain purchase orders to the plaintiff for erection and commissioning of a fly-ash separator.

9. It is the plaintiff's case that the plaintiff duly executed the contract in November 2015, but defendant No. 1 defaulted in making payments, which compelled the plaintiff to initiate arbitral proceedings under the Micro, Small and Medium Enterprises Development Act, 2006 ('MSME Act' for short).
10. These arbitral proceedings culminated in the issuance of arbitral award dated 04.12.2018, whereby a sum of about Rs.1.27 crores was awarded in favour of the plaintiff.
11. However, it is submitted, that since the reference to arbitration under the MSME Act did not included all of the plaintiff's claims against defendant No. 1, the plaintiff was compelled to file the present suit to raise its remaining claims, which were limited to the aforesaid bank guarantees issued by the plaintiff.
12. Mr. Punj contends that defendant No. 1 has been compelling the plaintiff to renew the bank guarantees from time-to-time under threat of invocation; and the bank guarantees were last extended upto 30.09.2022.
13. In view of the submissions made, as also what has been recorded above and based on the record, this court is satisfied that the plaintiff has made-out a *prima-facie* case for grant of the interim relief prayed for; that the balance of convenience lies in favour of the plaintiff and against defendant No. 1; furthermore, that irreparable harm would result to the plaintiff if the relief prayed for is not granted. This court



is further of the opinion, that in view of the arbitral award made in favour of the plaintiff, special equities exist in favour of the plaintiff and against defendant No. 1.

14. Accordingly, defendant No. 1 is restrained from invoking or encashing; and defendant No. 2 is restrained from releasing, any money against the performance bank guarantees with details as set-out above, till disposal of the suit.
15. Let a copy of this order be communicated by the plaintiff to the defendants within 03 days; and proof of such communication be placed on record.
16. Application stands disposed of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 6, 2022
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