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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 675/2017, IA No.11601/2017 (u/O XXXIX R-1&2 CPC)**
& IA No.14196/2017 (u/O VII R-10&11 CPC)
BHARAT HEAVY ELECTRICALS LIMITED Plaintiff

Through: Mr. Prashant Mehta & Ms. Vasundhra
Bhardwaj, Advs.

Versus

EGYPTIAN ELECTRICITY TRANSMISSION
COMPANY & ORS Defendants

Through: Mr. Ravinder Sethi, Sr. Adv. with Mr.
Ajay Monga, Mr. Ateev Mathur &
Ms. Jagriti Ahuja, Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.12.2017

1. The plaintiff Bharat Heavy Electricals Ltd. (BHEL) has instituted this suit for permanent injunction restraining defendant no.2 Honkong & Shanghai Banking Corporation (HSBC) Bank, India from making payment under a Counter Guarantee furnished by HSBC Bank, India at the instance of the plaintiff BHEL in favour of defendant no.3 HSBC Bank, Egypt and for restraining the defendant no.3 HSBC, Egypt from making payment to the defendant no.1 Egyptian Electricity Transmission Company (EETC) under a bank guarantee furnished by the defendant no.3 HSBC Bank, Egypt in favour of defendant no.1 EETC on the basis of the Counter Guarantee furnished by the defendant no.2 HSBC Bank, India.

2. The suit was entertained and summons / notice thereof ordered to be issued and vide *ex parte* ad-interim order dated 3rd October, 2017, the defendants directed to maintain status quo regarding the Bank Guarantees



and the defendants no.2&3 viz. HSBC Bank, India and HSBC Bank, Egypt also restrained from transmitting to the defendant no.1 EETC the funds of the Bank Guarantees particulars of which were given thereunder.

3. The order dated 11th October, 2017 records that the defendants no.2&3 viz. HSBC Bank, India and HSBC Bank, Egypt had been served through e-mail but since the plaintiff did not have the e-mail address of the defendant no.1, the defendant no.1 could not be served. The counsel for the defendant no.2 HSBC Bank, India entered appearance on that date since none appeared for the defendant no.3 HSBC Bank, Egypt, fresh summons were ordered to be issued to the defendants no.1 & 3 viz. EETC and HSBC Bank, Egypt.

4. The report of service of defendants no.1 and 3 viz. EETC and HSBC Bank, Egypt is awaited.

5. The counsel for the plaintiff though states that the defendant no.1 EETC has also been served via e-mail but has not filed affidavit of service.

6. Affidavit of service of defendants no.1&3 viz. viz. EETC and HSBC Bank, Egypt be filed by authorized officer of the plaintiff / advocate for the plaintiff by tomorrow.

7. None appears for the defendants no.1 and 3 viz. EETC and HSBC Bank, Egypt today as well.

8. Finding the defendant no.2 and the defendant no.3 both to be Honkong & Shanghai Banking Corporation, I have enquired from the senior counsel for the defendant no.2 HSBC Bank, India as to why he cannot also appear for the defendant no.3 HSBC Bank, Egypt.



9. The senior counsel for the defendant no.2 HSBC Bank, India states that though from the names, the defendants no.2&3 viz. HSBC Bank, India and HSBC Bank, Egypt respectively, appear to be the same entity but in fact are different entities and though the defendant no.2 HSBC Bank, India had enquired from defendant no.3 HSBC Bank, Egypt but no instructions for appearance were received and perhaps the defendant no.3 HSBC Bank, Egypt does not want to submit to the jurisdiction of the Indian Courts.

10. The aforesaid also, fortifies knowledge of defendant no.3 HSBC Bank, Egypt of the pendency of the present proceeding.

11. The defendant no.2 HSBC Bank, India has filed IA No.14196/2017 under Order VII Rule 11 CPC and the senior counsel for the defendant no.2 HSBC Bank, India states that written statement and reply to the application of the plaintiff under Order XXXIX Rules 1&2 CPC have also been filed.

12. The senior counsel for the defendant no.2 HSBC Bank, India states, that plaint along with the documents filed by the plaintiff do not disclose this Court to be having territorial jurisdiction to entertain the suit. It is contended i) that in the Agreement between the plaintiff and the defendant no.1 EETC, there is an arbitration clause and a provision for application of laws of Egypt; ii) that in the Counter Guarantee executed by the defendant no.2 HSBC Bank, India in favour of defendant no.3 HSBC Bank, Egypt also there is a clause providing for the same to be governed by the laws of Egypt.

13. On a *prima facie* reading of the aforesaid documents, it also appears that the Bank Guarantee and the Counter Guarantee are unconditional and considering the law relating to Bank Guarantees, a case for grant of injunction relating to Bank Guarantees is not made out.



14. The senior counsel for the defendant no.2 HSBC Bank, India has also referred to the order dated 19th September, 2017 in CS(COMM) No.190/2017 titled ***Bharat Heavy Electricals Ltd. Vs. Electricity Generation Incorporation & Ors.*** and contends that in identical facts, interim order was denied and the appeal preferred thereagainst has also been dismissed.

15. The counsel for the plaintiff seeks adjournment to file reply to the application under Order VII Rule 11.

16. There is no reply to be filed to an application under Order VII Rule 11 CPC which has to be decided on reading of the plaint alone and at best the documents filed by the plaintiff along with the plaint or the admitted documents.

17. The counsel for the plaintiff then states that he had briefed the senior counsel on the first date of hearing and on that ground seeks adjournment.

18. List on 19th December, 2017.

Interim orders to continue.

RAJIV SAHAI ENDLAW, J

DECEMBER 04, 2017

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