

Ramsarup Industries Ltd. Vs. W.B.S.E.D.C.L. and anr.

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Court : Kolkata

Decided On : Oct-28-2010

Judge : I . P. Mukerji, J.

Appeal No. : T No.58 of 2010

Appellant : Ramsarup Industries Ltd.

Respondent : W.B.S.E.D.C.L. and anr.

Advocate for Def. : Mr. Ajoy Krishna Chatterjee Sr.; Mr. B. Mitra Adv.

Advocate for Pet/Ap. : Mr. Abhrajit Mitra, Adv.

Judgement :

The Court: Leave granted under Clause 12 of the letters patent subject to the question of maintainability. This is an application to restrain invocation of bank guarantees for a sum of Rs.6,35,77,499/- and Rs.1,12,47,552/- both dated 7th March, 2009 and valid till 6th March, 2012.

These bank guarantees were furnished by the petitioner in connection with a works contract with the respondent Corporation. It was terminated by the respondent no.1 on 5th of October, 2010. According to learned counsel for the petitioner payments of Rs.9 crores or so are due to them by the respondent, Corporation which is immediately payable.

Accordingly it is inequitable on their part to invoke the bank guarantee. I find from a perusal of the bank guarantee that it is an unconditional bank guarantee payable on demand. When a bank guarantee is unconditional and payable on demand, I do not think that pendency of any claim of the party, at whose instance the bank guarantee was furnished, against the beneficiary is a factor at all to stop invocation of such bank guarantee. It does not come within the equitable ground at all.

Those rights can be decided in arbitration. Therefore, I do not find any substance in this application. Accordingly, this application is dismissed. There will be no order as to costs.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

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