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

+ W.P.(C) 2971/2020 & CM APPL. 10310-12/2020

ASHWANI MEHRA

..... Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate
with Mr. Kartik Nayar, Ms.
Anindita Roychowdhury,
Ms.Vatsala Rai and Mr. Raghav
Chadha, Advs.

versus

INDIAN OIL CORPORATION
LIMITED & ORS

Respondents

Through: Mr. V.N.Koura, Mr. Siddharth
Baruah and Mr. Ankur Mittal,
Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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17.04.2020

1. This matter has been taken up for hearing on video conferencing, consequent to listing thereof having been allowed by the Registrar of this Court.

2. This writ petition, filed by Mr. Ashwini Mehra, as a Resolution Professional of M/s. Punj Lloyd Limited (PLL) under Article 226 of the Constitution of India, essentially seeks issuance of appropriate writ, quashing and setting aside the actions of IOCL, who sought to invoke certain bank guarantees, which were submitted by the petitioner, in accordance with the terms of the contract between PLL

and IOCL, relating to the Haldia Refinery Project.

3. Mr. Nayar, learned Senior Counsel for the petitioner, at the very outset, submits that he is being constrained to approach this Court only because of certain unavoidable circumstances, in which his client finds itself placed, owing to the present n-COVID-2019 pandemic crisis, which has global implications, and to which India has also, unfortunately, fallen prey.

4. Even while ventilating the submissions, Mr. Nayar candidly conceded that he is not seeking any adjudication thereon, by this Court at this stage. He essentially draws my attention to an order dated 13th December, 2019, passed by the National Company Law Tribunal hereinafter referred to as “NCLT”) in CA – 2823(PB)/2019, which, incidentally, was a litigation between the present petitioner and the respondent, in which the petitioner sought stay against invocation of the other bank guarantees. By its order dated 13th December, 2019, the NCLT enjoined encashment of the bank guarantees, forming subject matter of the said proceedings. That order was carried, before this Court at the instance of IOCL by way of WP(C) No. 13774/2019. *Vide* order dated 23rd December, 2019, passed by a Division Bench of this Court (to which I was a Member), this Court relegated the IOCL to its remedies against the order of NCLT before the National Company Law Appellate Tribunal (NCLAT).

5. Mr. Koura submits that, consequent upon the said order, as such the IOCL has moved an application before the NCLT, seeking vacation of the interim order passed by it, on the ground that the

NCLT did not possess the jurisdiction to pass the said order. However, it is not in dispute that the said plea is yet to be heard and decided as of today, therefore, the order dated 13th December, 2019 (supra), passed by the NCLT continues to remain enforced. By the said order, the NCLT has exercised jurisdiction and stayed the invocation of the bank guarantees, submitted by the PLL, though the IOCL, through Mr. Koura has serious misgivings on pleading regarding propriety of such exercise.

6. Mr. Nayar's submission is that, his client, in the present case, too, intends to approach the NCLT and seeks an injunction against the IOCL from encashment/invocation of the bank guarantees, forming subject matter of this writ petition, but that, owing to the lockdown, announced by the Central Government, consequent upon the n-COVID-2019 crisis, which is to continue in force till 3rd May, 2020 as of now, he is not in a position to do so. Mr. Nayar has invited my attention to a notice, dated 22nd March, 2020, issued by the NCLT, which, as he submits, has been extended thereafter. According to the said notice, offices of the NCLT are continued to remain closed till 31st March, 2020. Mr. Nayar submits that this period has been extended, in view of continuing lockdown, which presently, is to remain in force till 3rd May, 2020. The notice of the NCLT also states that, with regard to unavoidable urgent matters, an application may be made by aggrieved parties by email to the Registry, NCLT, Chennai. After service of notice to the other side, the Acting President of the NCLT, sitting singly at Chennai could examine and pass necessary order on Wednesday and Friday. Mr. Nayar submits that his client addressed an email to the NCLT at Chennai, as directed by the

aforesaid notice dated 22nd March, 2020, but is yet to receive any response thereto. In the meanwhile, he points out, IOCL has already invoked and encashed the bank guarantees bearing numbers, 0410916BG1000023 dated 17th October, 2016 and 0410916BG1000604 dated 28th July, 2016, and that, therefore, the prayer in the writ petition does not survive qua the said bank guarantees.

7. In WP (C) 2766/2020, which is also between the present petitioner and respondent, an identical controversy arises, qua three other bank guarantees. I have disposed of that writ petition by staying the encashment of the said bank guarantees till the expiry of one week from 3rd May, 2020. I was inclined to do so in the present case as well; however, Mr Kaura submits that he desires to take instructions from his client and, therefore, requests that this writ petition be not disposed of.

8. For the aforesaid reasons, issue notice to the respondents to show cause as to why rule *nisi* be not issued.

9. Notice is accepted by Mr. Koura, learned counsel, on behalf of the respondents. Counter affidavit be filed within four weeks with advance copy to the petitioner, who may file rejoinder within two weeks thereof.

10. Renotify on 10th June, 2020 before the Roster Bench.

11. Till the next date of hearing, there shall be an ad interim order

restraining the encashment of bank guarantees being BG No. 6059IPEBG150085 dated 13th November, 2015 issued by Respondent No. 3, BG No. 0346415BG0000099 dated 13th November, 2015 issued by Respondent No.4, BG No. 00070043715 dated 20th November, 2015 issued by Respondent No.5, BG No. 0410916BG1000146 dated 12th November, 2015, BG No. 0410915FG1000153 dated 20th November, 2015, BG No. 0410915FG1000155 dated 20th November, 2015 and BG No. 0410915FG1000156 dated 20th November, 2015 issued by Respondent No. 2 which are yet to be invoked/encashed.

C.HARI SHANKAR, J.

APRIL 17, 2020

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