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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 28<sup>th</sup> December, 2020*  
+ **W.P.(C) 11213/2020 & CM APPLs. 34987-88/2020**

PHELAN ENERGY INDIA R J PVT LTD ..... Petitioner  
Through: Mr. Sujit Kumar Ghosh, Advocate

versus

INDUSIND BANK & ANR. .... Respondent  
Through: Mr. Manish Sharma, Adv. for R-1.  
Mr. Bharat Sangal, Sr. Advocate with  
Ms. Babita Kushwaha, Advocate for  
R-2.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done by video conferencing.
2. The present petition has been filed seeking return of the amounts, to the extent of Rs 1,92,00,000/-, received by Respondent No.2, due to encashment of the bank guarantee which was issued by Respondent No.1.
3. The brief background of the petition is that vide order dated 24<sup>th</sup> December, 2020, a ld. Single Judge of this Court had restrained the invocation of the bank guarantee given by Petitioner in favour of Respondent No.2 from Respondent No.1. The operative portion of the said order reads as under:

*“7. I have considered the submissions made by the learned counsels for the parties. The Circular dated 18.06.2019 regarding setting up of a Dispute Resolution Mechanism and the procedure prescribed by the Circular dated 20.09.2019 issued by the respondent no.1 clearly show that the*

*Dispute Resolution Committee is an intermediate step to ensure settlement of disputes between the developers of the solar/wind power units and the respondent no.4. While such disputes are pending before the respondent no.3, Clause 12 of the Procedure reproduced hereinabove, restrain the respondent no.4 from taking any coercive action against such developers during the pendency of the appeal before the respondent on.3. The intent clearly been that the developer is protected till the decision is taken by the respondent no. 3 and that would entail supplying a copy of the decision of the respondent no. 3 to the developer/petitioner.*

*8. In view of the above, the respondent no.1 is directed to supply the final decision on the appeal filed to the petitioner within two days from today. The petitioner shall thereafter, be entitled to seek appropriate legal remedy against the decision in accordance with law.*

*9. Subject to any orders being passed by the Court of competent jurisdiction, the respondent no.4 shall not receive any amount from the respondent no. 5 based on the invocation of the Bank Guarantee for a period of two weeks from today, for the petitioner to avail of its legal remedy. The petitioner shall inform about this order to the respondent no.5 for ensuring compliance.*

*10. It is made clear that this Court has not expressed any opinion on the merits of the dispute between the petitioner and the respondent no.4, which shall be adjudicated before an appropriate forum”*

4. Ms. Sujit Ghosh, ld. counsel appearing for the Petitioner, submits that the said order was passed at about 1:00 p.m. in the presence of the ld. counsels for IndusInd Bank and Respondent No.2. Ld. counsel submits that

he had on the same day at about 1:11pm, also informed the Bank that there has been a stay of the bank guarantee. Another detailed letter is also stated to have been sent in the evening of 24<sup>th</sup> December, 2020 itself, intimating the same. However, unfortunately, the bank guarantee invocation was given effect to, by the Bank, and an amount of Rs.1.92 crores was disbursed to Respondent No.2, Solar Energy Corporation of India Ltd. Thus, the prayer in this petition is for refund of the entire amount and for reinstatement of the bank guarantee, in terms of the order of the Id. single judge of this court.

5. A perusal of the order dated 24<sup>th</sup> December, 2020, shows that the same does not brook any ambiguity. It is clear that the bank guarantee could not have been encashed. The Respondent No.2 was also directed not to receive any money from the bank.

6. Mr. Sangal, Id. Senior Counsel, appearing for Respondent No.2 submits that the Respondent No.2 will, by the end of working hours tomorrow i.e., 29<sup>th</sup> December, 2020, retransmit the entire amount to the Respondent No. 1, IndusInd Bank, in order to enable the Bank to reinstate the Bank Guarantee. However, curiously Ms. Manish Sharma, Id. counsel appearing for Respondent No.1/ IndusInd Bank, claims that the Bank Guarantee is still alive.

7. In view thereof, the statement of Mr. Sangal, Id. Senior Counsel, is taken on record and the Respondent No.2 is directed to ensure that the entire amount received by Respondent No. 2 is repaid to the Respondent No.1/ IndusInd Bank by end of banking hours tomorrow i.e., 29<sup>th</sup> December 2020.

8. Further, in view of the fact that invocation of a bank guarantees can adversely affect the financial standing of the entity involved, it is made clear that the present invocation shall not affect the financial standing of the

Petitioner in any manner. The bank shall issue a certificate on or before 31<sup>st</sup> December, 2020, stating that the bank guarantee has been reinstated in favour of Respondent No.2.

9. Ld. counsel for the Petitioner agrees to renew the same in terms of the contract between the parties. No further orders are called for in this matter. With these observations the present petition and all pending applications are disposed of

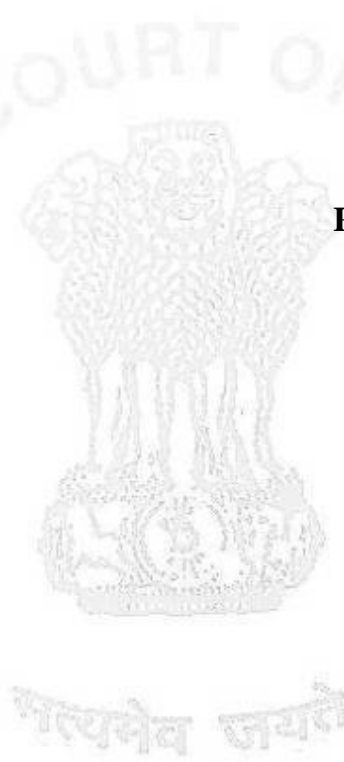
**PRATHIBA M. SINGH, J.**  
**(VACATION JUDGE)**

**DECEMBER 28, 2020**  
*dj/Ak*



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

+ **W.P.(C) 11155/2020**

PHELAN ENERGY INDIA R J PVT LTD ..... Petitioner  
Through Mr.Sujit Ghosh, Ms.Mannat Waraich  
and Ms.Toshin Bishnoi, Advs.  
versus

MINISTER OF NEW AND RENEWABLE ENERGY & ORS.

..... Respondents  
Through Mr.Anil Soni, CGSC with Mr.Devesh  
Dubey, Adv. for R-1.  
Mr. Bharat Sangal, Sr. Adv. with  
Ms.Babita Kushwaha, Adv. for R-4.  
Mr.Manish Sharma, Adv. for R-5.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**  
**24.12.2020**

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This hearing has been held by video conferencing.

**CM Nos.34799-34800/2020 (Exemption)**

Allowed, subject to all just exceptions.

**W.P.(C) 11155/2020 & CM No.34798/2020**

1. The limited grievance of the petitioner in the present petition is that without being supplied a copy of the decision by the respondent no.3, the respondent no.4 has proceeded to encash the Bank Guarantee of the petitioner based on such decision.
2. The petitioner asserts that it is only by the letter dated 21.12.2020 that the petitioner was informed of a decision having been taken by the respondent no.3, however, a copy thereof was not supplied. The petitioner requested for a copy of the same by its letter of the same date, however, till

date has not been supplied a copy of such decision. On the other hand, the respondent no.4 by its letter of the same date has invoked the Bank Guarantee of the petitioner.

3. The learned counsel for the petitioner has drawn my reference to the 'Procedural Guidelines for Dispute Resolution Mechanism to consider the unforeseen disputes between solar/wind power developers and SECI/ NTPC, beyond contractual agreements' dated 20.09.2019 issued by the respondent no.1 and specifically Clause 12 thereof which reads as under:

*“(12). Since the order dated 18.06.2019, with amendments thereon dated 20.09.2019, in Para 3, allows the developer to appeal to DRC against the SECI/NTPC's order within 21 days of SECI/NTPC's order, any adverse financial impact coming on the developer in pursuance of such order by SECI/NTPC should be put in abeyance for 21 days subsequent to the issuance of such order. In case appeal, is not filed within the said period of 21 days, or appeal is rejected for want of requisite fee, action as appropriate can be taken by SECI/NTPC. Further, no coercive action shall be taken on cases brought before the DRC till the final disposal of the appeal by the DRC and Ministry, where applicable.”*

4. The learned counsel for the petitioner submits that the respondent no.4 is restrained from taking any coercive action till the final disposal of the appeal by the Dispute Resolution Committee (DRC), this necessarily would entail the supply of copy of such decision to the petitioner which has not been done in the present case.

5. The learned senior counsel for the respondent no.4, however, on the other hand, submits that the Bank Guarantee being an independent contract, the respondent no.4 cannot be restrained from invoking the same. He further submits that by a letter received today from the petitioner, the petitioner has

offered to deposit the amount of the Bank Guarantee with the respondent no.4.

6. On the above offer, the learned counsel for the petitioner submits that the same was made without prejudice to the present petition and only because encashment of the bank guarantee has huge implications on the financial standing of the petitioner.

7. I have considered the submissions made by the learned counsels for the parties. The Circular dated 18.06.2019 regarding setting up of a Dispute Resolution Mechanism and the procedure prescribed by the Circular dated 20.09.2019 issued by the respondent no.1 clearly show that the Dispute Resolution Committee is an intermediate step to ensure settlement of disputes between the developers of the solar/wind power units and the respondent no.4. While such disputes are pending before the respondent no.3, Clause 12 of the Procedure reproduced hereinabove, restrain the respondent no.4 from taking any coercive action against such developers during the pendency of the appeal before the respondent no.3. The intent clearly been that the developer is protected till the decision is taken by the respondent no. 3 and that would entail supplying a copy of the decision of the respondent no. 3 to the developer/petitioner.

8. In view of the above, the respondent no.1 is directed to supply the final decision on the appeal filed to the petitioner within two days from today. The petitioner shall thereafter, be entitled to seek appropriate legal remedy against the decision in accordance with law.

9. Subject to any orders being passed by the Court of competent jurisdiction, the respondent no.4 shall not receive any amount from the respondent no. 5 based on the invocation of the Bank Guarantee for a period

of two weeks from today, for the petitioner to avail of its legal remedy. The petitioner shall inform about this order to the respondent no.5 for ensuring compliance.

10. It is made clear that this Court has not expressed any opinion on the merits of the dispute between the petitioner and the respondent no.4, which shall be adjudicated before an appropriate forum.

11. The petition is disposed of with the above direction.

12. A copy of the order be supplied to the learned counsels for the parties on the email address provided.

**NAVIN CHAWLA, J**

**DECEMBER 24, 2020/Arya**



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