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

+ **CS(COMM) 836/2023**

**SOUTH EAST U P POWER TRANSMISSION COMPANY
LIMITED** Plaintiff

Through: Mr. Jayant Mehta, Sr. Adv. with Mr.
Sh. Venkatesh, Mr. Siddharth Joshi,
Mr. Abhishek Nangia, Mr. Mohit
Gupta, Advs.

versus

IDBI BANK LIMITED & ANR. Defendants

Through: Mr. Praful Jindal, Adv. for D-1/IDBI

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

28.11.2023

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CAV 597/2023

Since caveator/Defendant No.1 has appeared on advance notice.

Accordingly, CAVEAT stands discharged.

I.A. 23200/2023

Exemption is allowed subject to all just exceptions.

CS(COMM) 836/2023

1. The present suit has been filed seeking the following prayers;

“(a) Passed a decree in favour of the Plaintiff and against the defendant No. 1 mandatorily enjoining IDBI Bank to process encashment of the Suit BGs and to remit the proceeds thereof to the Plaintiff and to take all necessary, incidental and ancillary steps in respect of the same including to keep the Suit BGs in good order in order to process their encashment in favour of the Plaintiff.



(b) Passed a decree in favour of the Plaintiff and against PFC thereby permanently restraining PFC from claiming any rights or interest of any kind, directly or indirectly over the Suit BGs and from interfering their invocation and encashment by the Plaintiff.

(c) A ward costs and interest to the Plaintiff

(d) Pass such other orders that this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

2. Let summons be issued.
3. Mr. Praful Jindal, learned counsel for defendant No.1/IDBI Bank appears and accepts summons on behalf of the defendant. Let written statements be filed within thirty days from today.
4. Let summons be issued to defendant No.2 through all permissible modes upon filing PF by the plaintiff.
5. The defendant No.1 is directed to file an affidavit of admission/denial against the documents filed by the plaintiff, failing which the written statement shall not be taken on record.
6. The plaintiff is at liberty to file replications thereto within fifteen days of the filing of the written statements, which shall be accompanied by affidavits of admission/denial, in respect of the documents filed by the defendant, failing which the replications shall not be taken on record.
7. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
8. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
9. List before the Joint Registrar on 25.01.2024.

I.A. 23199/2023

10. The present application has been moved under Order XXXIX Rule 1



& 2 read with Section 151 CPC seeking following prayers;

(a) Pass ad-interim ex-parte direction restraining IDBI Bank from releasing any amount in bank account of PFC qua the irrevocable and unconditional BGs issued in favour of the Plaintiff;

(b) Pass any such further orders(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

11. Issue notice.

12. Mr. Praful Jindal, learned counsel for defendant No.1/IDBI Bank has accepted notice.

13. Mr. Jayant Mehta, learned senior counsel for the plaintiff submits that initially, the bank guarantee were issued by ICOLUX to whom the plaintiff had given the contract as a retention bank guarantee. However, later on, the benefits of these bank guarantees were given by the plaintiff to its lender/PFC for securing the loan given by the PFC to the plaintiff/company. While, the matter rested thus, IBC proceedings were initiated against the plaintiff and resolution plan IRP was appointed and the resolution plan was duly approved.

14. Learned senior counsel submits that as per the terms of the resolution plan, these bank guarantees were returned to the plaintiff/company and the PFC has no right, title or interest over the said bank guarantees. Learned senior counsel submits that in the meanwhile, IDBI filed a writ petition bearing W.P.(C)11946/2018 against the PFC in which initially, a status quo order was passed vide order dated 12.05.2023. However, later on, this writ petition was disposed of inter alia holding that this is a contractual dispute between the parties.



15. Learned senior counsel submits that subsequently, the IDBI filed another civil Suit bearing CS(COMM) No. 660/2023 (tilted as IDBI Bank v. PFC & Ors.) against the plaintiff and PFC which is pending before this Court and is listed on 22.01.2024. Learned senior counsel submits that in that suit, a statement was made on behalf of IDBI Bank Ltd that there is the possibility of an amicable settlement. However, the plaintiff is not aware of that. Learned senior counsel submits that the interest of the plaintiff may be secured as the bank guarantees which though expired may not be enclashed by the IDBI Bank otherwise, the suit will become infructuous.
16. Issue notice.
17. Mr. Praful Jindal, learned counsel for defendant No.1/IDBI Bank has accepted notice.
18. Learned counsel for the defendant No.1 submits that in fact the plaintiff company has played a fraud upon the IDBI Bank. It has been submitted that the ICOLUX company was an affiliate/subsidiary company with eight common directors of the plaintiff/company. It has been submitted that the contract was awarded to ICOLUX and the subsidiary company executed the retention bank guarantee in favour of the plaintiff. Learned counsel for the IDBI submits that the interest of the defendant Bank is being seriously prejudiced.
19. It is pertinent to mention here that it has come in the submissions of learned counsel for defendant No.1 that the bank guarantees have already expired and thus, the funds of bank guarantees Nos.



S. No.	Bank Guarantee No.	Amount (in Rs.)
1.	140127IBGF00590 dated 30.12.2014	10,00,00,000/-
2.	150127IBGF00105 dated 28.03.2015	2,00,00,000/-
3.	150127IBGP00746 dated 30.07.2015	12,50,00,000/-
4.	150127IBGP00784 dated 11.08.2015	10,00,00,000/-
5.	150127IBGP00785 dated 11.08.2015	10,00,00,000/-
6.	150127IBGP01072 dated 30.10.2015	10,00,00,000/-
7.	150127IBGP01073 dated 30.10.2015	4,00,00,000/-
	Total	58,50,00,000/-

may not be released by the IDBI Bank. In view of the fact that if the funds are released the suit will become infructuous. As per submissions of the learned counsel for the plaintiff, the right of BG's now stands vested with plaintiff, the balance of convenience also lies in its favour. However, this is a prima facie view and shall not amount to be an expression on the merits of the case.

20.Let the reply be filed.

21.Let notice of the application be issued to defendant No.2 through all permissible modes upon filing PF by the plaintiff.



be maintained till the next date of hearing.

22. List the matter before the Joint Registrar on 25.01.2024 for completion of pleadings.

DINESH KUMAR SHARMA, J

NOVEMBER 28, 2023

Pallavi