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MAT 916 of 2019
with
CAN 6067 of 2019
with
CAN 12694 of 2019
with
COT 55 of 2019

Bank of Baroda & Anr.
Vs.

Indian Oil Corporation Limited & Ors.

Mr. Santosh Kumar Ray
..for the Appellants

Mr. Tilok Bose
Ms. Vineeta Meharia
Ms. Urmila Chakraborty
Ms. Subika Paul
..for the Respondent No.1 in
MAT 916 of 2019 and the
Petitioner in COT 55 of 2019.

Mr. Krishnendu Bhattacharya
Mr. Priyankar Ganguly
..for the Respondent No.2.

Since the appellants cannot proceed with the matter, MAT 916 of 2019 is dismissed for default.

There is a cross-objection by the first respondent in the appeal, COT 55 of 2019, which is taken up immediately upon the dismissal of the appeal.

According to the first respondent- Indian Oil Corporation Limited (IOCL), it

entered into an agreement with one Simplex Projects Limited in 2017 for undertaking certain work at the Bongaigaon facility of IOCL. In terms of such agreement, IOCL was obliged to make a mobilisation advance against a bank guarantee. In addition, Simplex was also required to furnish a bank guarantee on account of security deposit.

IOCL submits that the agreement between it and Simplex envisaged the furnishing of a bank guarantee equivalent to 110% of the security deposit if a combined bank guarantee on account of security deposit and mobilisation advance were to be furnished. An unconditional bank guarantee was furnished by the appellants herein on behalf of Simplex for about Rs.6.97 crore.

According to IOCL, despite Simplex being given 50% of the mobilisation advance, no work was forthcoming. After IOCL issued several notices to Simplex which went unheeded, IOCL invoked the

bank guarantee. It is submitted on behalf of IOCL that notwithstanding the bank having no right to stall immediate payment upon the invocation of an unconditional bank guarantee, the bank in this case sought some time. IOCL claims that the bank must have informed Simplex which promptly instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court by virtue of the arbitration agreement contained in the matrix contract between IOCL and Simplex.

IOCL submits that despite Simplex failing to obtain any order in such proceedings and the Delhi High Court observing that the bank guarantee was unconditional and payment thereunder could not be avoided once the guarantee was invoked, an appeal was preferred which was withdrawn by or about June 1, 2018. The bank, however, refused to release the payment in terms of the unconditional

guarantee on the ground that the money may not have been made available by Simplex to the bank.

IOCL says that it was in such circumstances that IOCL was constrained to invoke the writ jurisdiction of this court for a direction on the Bank of Baroda to release the payment under the unconditional bank guarantee. IOCL maintains that in such circumstances and considering the conduct of the Bank of Baroda, an appropriate order ought to have been passed to revoke its licence since it had acted in a manner unbecoming of a bank, a nationalised bank at that. The cross-objection is against such part of the order impugned dated June 24, 2019 by which the bank has been directed to immediately make the payment; but the Reserve Bank has not been required to look into the conduct of the Bank of Baroda to cancel its licence.

The appeal has been dismissed, as

evident from the above since the appellants could not proceed with the same. Considering the conduct of the appellants, the Reserve Bank of India should consider what appropriate steps may be taken against the Bank of Baroda, including revoking its licence or the authority to carry on banking business, if necessary. COT 55 of 2019 succeeds to such limited effect.

CAN 6067 of 2019 and CAN 12694 of 2019 stand disposed of.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Kausik Chanda, J.)

