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

% ***Date of Decision:*** *06th January, 2026*

\+ O.M.P.(I) (COMM.) 6/2026 & I.A. 289/2026

M/S KGK ENGINEERS PVT LTD .....Petitioner

Through: Mr. K. Shiva, Advocate (M: 8489662301) (Email:shivakrishnamurti@gmail.com)

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA NHAI & ANR. .....Respondents

Through: Mr. Manish K. Bishnoi, Mr. Khubaib Shakeel, Advocates for NHAI (M:7006913529) Email: kskhubaib07@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL):*

1. The present petition has been filed under Section 9 (1) (ii) (e) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking injunction for restraining the respondent no.1 from terminating the Contract Agreement dated 30th June, 2023 executed between the parties, and consequently restraining the respondents from invoking the Bank Guarantees provided by the petitioner.

2. As per the case put forth by the petitioner, the petitioner had emerged as the successful bidder in the 'Request For Proposal' ("RFP") for permanent rectification of black spot by construction of a light vehicular

underpass at *Poottuthakku Junction* in *Krishnagiri-Walajapet Section of NH-48* in *Tamil Nadu*. The Contract Agreement was formally executed on 30th June, 2023, with the appointed date declared as 12th September, 2023, and the Scheduled Completion date fixed at 11th September, 2024.

3. As per Clause 7 of the Contract Agreement dated 30th June, 2023, between the parties, the petitioner was liable to furnish an irrevocable and unconditional Bank Guarantee to the tune of 3% of the contract value. The petitioners in compliance of the same, furnished the following Bank Guarantees:

i. Performance Security bearing 065571123000017 dated 22nd June, 2023 to the tune of Rs. 24,89,800/-.

ii. Performance Security bearing 065571123000019 dated 26th July, 2023 to the tune of Rs. 24,89,720/-.

iii. Additional Performance Guarantee bearing 065571123000018 dated 22nd June, 2023 to the tune of Rs. 1,19,232/- was in addition to the Bank Guarantees already furnished.

4. Further, the said Contract Agreement in Clause 26.3, contains an arbitration clause, which reads as under:

> *"**26.3 Arbitration***
>
> *26.3.1 Any Dispute resolved amicably by conciliation as provided in Clause 26.2 shall be finally settled by arbitrations set forth below:*
>
> *(i) The Dispute shall be finally referred to Society for Affordable Resolution of disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and Provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by*

Substantive Law of India.

(ii) The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time.

(iii) Subject to the provisions of THE LIMITATION ACT, 1963, as amended from time to time, Arbitration may be commenced during or after the Contract Period, provided that the obligations of Authority and the Contractor shall not be altered by reason of the Arbitration being conducted during the Contract Period.

(iv) The venue of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.

(v) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.

26.3.2 The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

26.3.3 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

26.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

xxx xxx xxx"

5. Subsequently, various disputes arose between the parties, as the request of the petitioner for extension of time for completion of work under the Contract Agreement, without levy of any damages, was rejected by the respondent no.1. It is the case of the petitioner that the respondent no.1 failed to handover the critical land parcel to the petitioner, resulting in delay in the contractual work, and the same amounted to a fundamental breach by

the respondent no.1 of its reciprocal contractual obligations under the Contract Agreement.

6. In view of the various disputes between the parties, the petitioner *vide* its letter dated 31st October, 2025, requested the respondent no.1 to constitute a Dispute Resolution Board under Clause 26.1.3 of the Contract Agreement to settle the disputes between them.

7. However, the Regional Officer of the respondent no.1 issued an 'Intention To Terminate Notice' dated 15th December, 2025. The said Notice recited that the Contract Agreement dated 30th June, 2023, would be terminated due to the petitioner's failure in ensuring compliance of its obligations. It is the case of the petitioner that the said Notice was addressed to the petitioner on E-mail ID bearing ***hr@kgkepl.com***, despite a communication regarding change of E-mail ID on behalf of the petitioner as early as 07th August, 2023. Thus, as per the petitioner, the said E-mail communicating the Notice was never received by the petitioner. Furthermore, the aforesaid Intention to Terminate Notice dated 15th December, 2025, was received physically by the petitioner only on 22nd December, 2025.

8. Pursuant to the aforesaid, the petitioner submitted a detailed reply on 31st December, 2025, stating that mandatory cure period for defaults had not been granted to the petitioner. Thus, the petitioner sought time till 16th January, 2026, to submit a reply regarding the remedial measures taken by the petitioner.

9. However, the respondent no.1 issued a Termination Notice on 31st December, 2025 to the petitioner, which as per the petitioner, was issued within a period of 9 days from receipt of the Intent To Terminate Notice,

and was thus, in violation of Clause 23.1 (ii) of the Contract Agreement which provided for a mandatory 15 day period from the receipt of Intention To Terminate Notice. Further, as per the case put forth by the petitioner, the said Termination Notice was also addressed to the E-mail ID bearing ***hr@kgkepl.com***, despite a communication regarding change of E-mail ID on behalf of the petitioner as early as 07th August, 2023.

10. Furthermore, on the same day, i.e., 31st December, 2025, the respondent no.1 also issued a letter to the Branch Manager, Indian Overseas Bank, seeking the invocation of the Bank Guarantees issued by the petitioner.

11. Thus, the present petition has been filed seeking to restrain the respondent no.1 from giving effect to the Termination Notice dated 31st December, 2025, and restraining the encashment of the Bank Guarantees.

12. Responding to the present petition, learned counsel appearing for the respondent no.1 submitted that the Contract Agreement between the parties is determinable, and pursuant to the termination of the Contract Agreement, the project in question has already been taken over by the respondent no.1. He submitted that no work had been executed by the petitioner for the last four months, and that the work had been completely abandoned by the petitioner.

13. Learned counsel for respondent no. 1 further submitted that the Bank Guarantees in question are unconditional, and have validly been invoked by the respondent no.1.

14. He further submitted that the various communications by the petitioner on its Letter Head to the respondent no.1, reflects only one E-mail ID bearing ***hr@kgkepl.com***, and the Intention To Terminate Notice issued

on 15th December, 2025, was duly sent on the said E-mail ID. Thus, the said Notice was duly received by the petitioner on 15th December, 2025, and the termination of the Contract Agreement on 31st December, 2025, is in consonance with the Contract Agreement between the parties.

15. Learned counsel for the respondent no.1 also relied upon Clause 10.3 (iii) of the Contract Agreement dated 30th June, 2023, to submit that, in case, the damages exceeded 10% of the contract price, the contractor shall be deemed to be in default of the Contract Agreement having no cure, and that the respondent no.1 shall be entitled to terminate the Contract Agreement by issuing a Termination Notice, in accordance with provisions of Clause 23.1 (ii). In the present case, the damages imposed upon the petitioner, is approximately 20% of the contract price, and thus, the Contract Agreement has validly been terminated, in consonance with the terms and conditions of the Contract Agreement.

16. Having heard learned counsels for the parties, at the outset, this Court notes that as per Clause 23 of the Contract Agreement, both the parties had the right to terminate the Contract Agreement. Clause 23 of the Contract Agreement reads as under:

"xxx xxx xxx

Article 23
Termination

23.1 Termination for Contractor Default

(i) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the "**Contractor Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

(a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;

(b) after the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;

(c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45(forty-five)days;

(d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority;

(e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorized by the Authority's Engineer;

(f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;

(g) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Engineer;

(h) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;

(i) the Contractor creates any Encumbrance in breach of this Agreement;

(j) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;

(k) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is

appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

(l) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(m) a resolution for winding up or insolvency of the Contractor is passed, or any petition for winding up or insolvency of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:

i. the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and

ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;

(n) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be false or the Contractor is at any time hereafter found to be in breach or non-compliance thereof;

(o) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(p) the Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or

(q) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

(r) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

i. for doing or forbearing to do any action in relation to the Contract, or

ii. for showing or forbearing to show favor or disfavor to any person in relation to the Contract,

or if any of the Contractor's personnel, agents or subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph(s). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

(ii) Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

(iii) The following shall apply in respect of cure of any of the defaults and/ or breaches of the Agreement:

(a) The Cure Period shall commence from the date of the notice by the Authority to the Contractor asking the latter to cure the breach or default specified in such notice;

(b) The Cure Period provided in the Agreement shall not relieve the Contractor from liability for Damages caused by its breach or default;

(c) The Cure Period shall not in any way be extended by any period of suspension under the Agreement;

(d) If the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Contractor for damages incurred) shall be extended by the period taken by the Authority to accord its required approval.

(iv) After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

23.2 Termination for Authority Default

(i) In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

(a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect

on the Contractor;

(b) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;

(c) the Authority has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances required for construction of the Project Highway;

(d) the Authority becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect;

(e) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;

(f) the Authority's Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents; or

(g) the whole work is suspended by Authority beyond 120 (one hundred twenty) days for any reason which is not attributed to the Contractor.

(ii) Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

If on the consideration of the Authority's representation or otherwise, the contractor does not issue the Termination Notice on such 15th (fifteenth) day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor and he would be deemed to have waived any claim and forfeited any right to any other remedy on that count or in relation to such action or omission.

17. Thus, it is evident that as per the contractual terms, the respondent no.1 is entitled to terminate the Contract Agreement upon occurrence of a Contractor Default, by issuing an Intention to Terminate Notice, informing the contractor of its intention to issue a Termination Notice, and grant 15 days to the contractor to make a representation. The respondent no.1, after expiry of such 15 days, whether or not, it is in receipt of any representation from the contractor, is entitled to issue the Termination Notice.

18. At this stage, reference may also be made to Clause 10.3 (iii) of the

Contract between the parties, which reads as under:

"xxx xxx xxx

(iii) The Authority shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the Authority without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3 (ii) shall not exceed 10% (ten percent) of the Contract Price. If the damages exceed 10% (ten percent) of the Contract Price, the Contractor shall be deemed to be in default of this agreement having no cure and the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice in accordance with the provisions of Clause 23.1 (ii).

xxx xxx xxx"

19. Reference to the aforesaid Clause evidences that the respondent authority is within its right to terminate the agreement by issuing a Termination Notice in accordance with the provisions of Clause 23.1 (ii), if the damages exceeded 10% (ten percent) of the contract price, in which eventuality, the contractor shall be deemed to be in default of the agreement having no cure. This Court notes the submission made on behalf of respondent no. 1 that in the present case the damages imposed upon the petitioner are approximately 20% (twenty percent) of the contract price, attracting the provisions of Clause 10.3(iii) read with Clause 23.1(ii) of the Contract Agreement.

20. It is an admitted fact that the Intention to Terminate Notice dated 15th December, 2025, was issued on the E-mail ID of the petitioner, i.e., ***hr@kgkepl.com***. It is to be noted that the said E-mail ID is reflected on the Letter Head of the petitioner as the sole E-mail ID in all its written communications to the respondent no.1 herein. Therefore, the contention of

the petitioner that the service of Intention to Terminate Notice dated 15th December, 2025, was wrongly communicated on the aforesaid E-mail ID, cannot be accepted. Considering the documents on record, it is apparent that the Intention to Terminate Notice dated 15th December, 2025, was validly served upon the petitioner on 15th December, 2025 itself on the E-mail ID of the petitioner, as indicated on its Letter Head in all its communications to the respondent no.1 herein. Therefore, it is evident that the termination of the Contract Agreement on 31st December, 2025, was in consonance with the contractual terms as stipulated in Clause 23.1 (ii) of the Contract Agreement. Thus, no fault can be found in the procedure followed by the respondent no.1 in terminating the Contract Agreement of the petitioner.

21. Perusal of the Contract Agreement between the parties makes it evident that the Contract Agreement is terminable at the instance of both the parties. Once a contract is determinable in nature, injunction cannot be granted in view of operation of the legal bar in this regard by virtue of Section 14(d) of the Specific Relief Act, 1963 ("Specific Relief Act") read with Section 41(e) of the said Act. The relevant portions of Section 14 (d) and Section 41 (e) of the Specific Relief Act, read as under:

> *"xxx xxx xxx*
>
> ***14. Contracts not specifically enforceable.****— The following contracts cannot be specifically enforced, namely-*
>
> ***(a) ……***
>
> ***(b)……***
>
> ***(c) …….***
>
> *(d) a contract which is in its nature determinable.*
>
> *xxx xxx xxx*
>
> ***41. Injunction when refused.****— An injunction cannot be granted -*

(a) ……

(b) ……

(c) ……

(d) ……

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

xxx xxx xxx"

22. Holding that an injunction is statutorily prohibited with respect to a contract which is determinable in nature, the Division Bench of this Court in the case of ***Rajasthan Breweries Limited versus The Stroh Brewery Company, 2000 SCC OnLine Del 481***, held as under:

"xxx xxx xxx

The effect of breach of a contract by a party seeking to specifically enforce the contract under the Indian law is enshrined in Section 16(c) read with Section 41(e) of the Specific Relief Act, 1963. ***Clause (e) of Section 41 of the Specific Relief Act provides that injunction cannot be granted to prevent the breach of contract, the performance of which would not be specifically enforced. Clause (c) of Section 41 enumerates the nature of contracts, which could not be specifically enforced. Clause (c) to sub-section (1) of Section 14 says that a contract which is in its nature deter-minable cannot be specifically enforced. Learned Single Judge thus was justified in saying that if it is found that a contract which by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract no injunction could also be granted and this is mandate of law.*** *This, however, is subject to an exception, as provided in Section 42 that where a contract comprises an affirmative agreement to do a certain Act. coupled with a negative agreement, express or implied, not to do a certain Act, the circumstances that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting and injunction to perform the negative agreement.*

xxx xxx xxx

Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. ***At the***

most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.

xxx xxx xxx"

(Emphasis Supplied)

23. Likewise, in the case of ***Inter Ads Exhibition Pvt. Ltd. Versus Busworld International Cooperative Vennootschat Met Beperkte Anasprakelijkheid, 2020 SCC OnLine Del 351***, it was held that once termination of contract takes effect, its operation cannot be stayed by an interim injunction. No direction amounting to specific performance or directing continuation of an arrangement which stood terminated can be passed, as a determinable contract cannot be enforced. Thus, it was held as follows:

"xxx xxx xxx

44. I am fortified in my view by the judgment of a Co-ordinate Bench of this Court in Jindal Steel and Power Ltd. v. SAP India Pvt. Ltd., (2015) 221 DLT 708 where one of the questions before the Court was whether in view of the agreement having been terminated an injunction could be granted against the operation of the termination notice. The Court held that the contract being determinable could not be enforced due to the legal bar under the SRA. It answered the question in the negative holding that no

injunction on the termination order could be granted, the same having taken effect and damages was an adequate remedy.

45. *I may now refer to the judgment of a Division Bench of this Court in Indian Railway Catering and Tourism Corporation Ltd. (IRCTC) v. Cox and Kings India Ltd. and Arup Sen, (2012) 186 DLT 552 which although has been relied upon by the petitioner, but in the opinion of this Court enures to the advantage of the respondent. The controversy in the said case was similar and the facts were very close to the present case. The issue was whether a direction in the nature of mandatory injunction amounting to specific performance or directing continuation of an arrangement which stood terminated, could be given.*

46. A Joint Venture Agreement was terminated by one party to the contract. The Division Bench relying on the judgment in the case of Rajasthan Breweries Ltd. (supra) as well as Section 14 of the SRA held that once the lease had been terminated, passing of mandatory injunction would amount to first creating an agreement between the parties and then enforcing the same. The Division Bench set aside the judgment of the learned Single Judge whereby the learned Single Judge had by way of an interim measure allowed the running of the train under the contract in question on the ground of irreparable loss to the Company and inconvenience to public. The Division Bench held that the interim arrangement was neither justified nor legally sustainable. Reliance was placed on para 19 of the judgment in the case of Rajasthan Breweries Ltd. (supra), which has been quoted in the earlier part of this judgment.

47. It is clear that in law, once termination of contract takes effect the operation cannot be stayed by an interim injunction. *Thus, the second relief sought in the present petition cannot be granted and is hereby rejected.*

xxx xxx xxx"

(Emphasis Supplied)

24. Considering the established law that specific performance of a determinable contract/agreement cannot be enforced, it is clear that no injunction can be granted in favour of the petitioner to restrain the operation of the Termination Notice dated 31st December, 2025.

25. The other prayer made by the petitioner is to restrain invocation of the

Bank Guarantees by the respondents.

26. Law with regard to invocation of Bank Guarantees is well settled that, in case of an unconditional Bank Guarantee, the beneficiary is entitled to realize such a Bank Guarantee in terms thereof, irrespective of any pending disputes. The bank issuing a Bank Guarantee is not concerned with the underlying dispute between the parties to the contract. Thus, when a Bank Guarantee is invoked in terms of the contract between the parties, the bank is bound to honor the same. Thus, the Supreme Court in the case of ***U.P. State Sugar Corporation Versus SUMAC International Ltd., (1997) 1 SCC 568***, held as follows:

> *"xxx xxx xxx*
>
> ***12. The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country****. *The two grounds are not necessarily connected, though both may coexist in some cases. In the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works*

contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. ***The bank which gives the guarantee is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction****. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase Manhattan Bank [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197)*

*"****The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it charged****."*

This Court set aside an injunction granted by the High Court to restrain the realisation of the bank guarantee.

xxx xxx xxx

15. *Our attention was invited to a number of decisions on this issue — among them, to Larsen & Toubro Ltd. v. Maharashtra SEB [(1995) 6 SCC 68] and Hindustan Steel Workers Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd. [(1995) 6 SCC 76] as also to National Thermal Power Corpn. Ltd. v. Flowmore (P) Ltd. [(1995) 4 SCC 515] The latest decision is in the case of State of Maharashtra v. National Construction Co. [(1996) 1 SCC 735 : JT (1996) 1 SC 156] where this Court has summed up the position by stating: (SCC p. 741, para 13)*

*"****The rule is well established that a bank issuing a guarantee is not concerned with the underlying contract between the parties to the contract. The duty of the bank under a performance guarantee is created by the document itself. Once the documents are in order the***

bank giving the guarantee must honour the same and make payment ordinarily unless there is an allegation of fraud or the like. The courts will not interfere directly or indirectly to withhold payment, otherwise trust in commerce internal and international would be irreparably damaged. But that does not mean that the parties to the underlying contract cannot settle the disputes with respect to allegations of breach by resorting to litigation or arbitration as stipulated in the contract. The remedy arising ex contractu is not barred and the cause of action for the same is independent of enforcement of the guarantee*."*

The other recent decision is in Hindustan Steelworks Construction Ltd. v. Tarapore & Co. [(1996) 5 SCC 34: JT (1996) 6 SC 295]

16. *Clearly, therefore, the existence of any dispute between the parties to the contract is not a ground for issuing an injunction to restrain the enforcement of bank guarantees. There must be a fraud in connection with the bank guarantee. In the present case we fail to see any such fraud. The High Court seems to have come to the conclusion that the termination of the contract by the appellant and his claim that time was of the essence of the contract, are not based on the terms of the contract and, therefore, there is a fraud in the invocation of the bank guarantee. This is an erroneous view.* ***The disputes between the parties relating to the termination of the contract cannot make invocation of the bank guarantees fraudulent****. The High Court has also referred to the conduct of the appellant in invoking the bank guarantees on an earlier occasion on 12-4-1992 and subsequently withdrawing such invocation. The court has used this circumstance in aid of its view that the time was not of the essence of the contract. We fail to see how an earlier invocation of the bank guarantees and subsequent withdrawal of this invocation make the bank guarantees or their invocation tainted with fraud in any manner. Under the terms of the contract it is stipulated that the respondent is required to give unconditional bank guarantees against advance payments as also a similar bank guarantee for due delivery of the contracted plant within the stipulated period. In the absence of any fraud the appellant is entitled to realise the bank guarantees.*

xxx xxx xxx"

(Emphasis Supplied)

27. It is equally well settled that a Bank Guarantee is an independent and a separate contract between the bank and the beneficiary. Existence of any dispute between the parties to the contract is not a ground for issuing an

order of injunction to restrain enforcement of Bank Guarantees. Thus, in the case of ***Gujarat Maritime Board Versus Larsen and Toubro Infrastructure Development Projects Limited and Another, (2016) 10 SCC 46***, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***11. It is contended on behalf of the first respondent that the invocation of bank guarantee depends on the cancellation of the contract and once the cancellation of the contract is not justified, the invocation of bank guarantee also is not justified. We are afraid that the contention cannot be appreciated. The bank guarantee is a separate contract and is not qualified by the contract on performance of the obligations. No doubt, in terms of the bank guarantee also, the invocation is only against a breach of the conditions in the LoI. But between the appellant and the Bank, it has been stipulated that the decision of the appellant as to the breach shall be absolute and binding on the Bank****.*
>
> ***12. An injunction against the invocation of an absolute and an unconditional bank guarantee cannot be granted except in situations of egregious fraud or irretrievable injury to one of the parties concerned. This position also is no more res integra****. In Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. [Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co., (2007) 8 SCC 110] , at para 14 : (SCC pp. 117-18)*
>
> *"14.* ***From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee or a letter of credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a bank guarantee or a letter of credit****:*
>
> *(i)* ***While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.***
>
> ***(ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.***
>
> ***(iii) The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.***
>
> ***(iv) Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of***

any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned*."*

xxx xxx xxx"

(Emphasis Supplied)

28. Plain reading of the Bank Guarantees submitted by the petitioner show that the same are unconditional and irrevocable in nature, wherein, it is stipulated that a letter from the respondent no.1-authority, under the hand of an officer not below the rank of General Manager that the contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Contract Agreement, shall be conclusive, final and binding on the bank. Further, the bank has agreed in the said Bank Guarantees that the respondent no.1-authority shall be the sole judge as to whether the contractor is in default in due and faithful performance of its obligations during and under the Contract Agreement, and its decision that the contractor is in default, shall be final and binding on the bank, notwithstanding any differences between the respondent no.1-authority and the contractor.

29. Position of law is no more *res integra* that an injunction against the invocation of an absolute and an unconditional Bank Guarantee cannot be granted except in situations of egregious fraud or irretrievable injury to one of the parties concerned. However, no such facts of egregious fraud or irretrievable injury, have been pleaded, or brought forth before this Court.

30. In view of the detailed discussion hereinabove, no merit is found in

the present petition. The same is accordingly dismissed. The pending application also stands disposed of.

MINI PUSHKARNA, J

JANUARY 6, 2026/au