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

% **Date of Decision: 28<sup>th</sup> April, 2026**

+ O.M.P.(I) (COMM.) 185/2026 & I.A. Nos. 11833/2026, 11834/2026  
& 11835/2026

M/S NKG INFRASTRUCTURE LTD.

.....Petitioner

Through: Mr. Ankit Gupta with Ms. Manaswee  
and Mr. Shaurya A. Singh,  
Advocates.  
(M): 9560186529  
Email: [ankitguptadvocate5@gmail.com](mailto:ankitguptadvocate5@gmail.com)

versus

AIRPORT AUTHORITY OF INDIA (AAI) THROUGH DJM/JT.  
GM ENGG. (C) JABALPUR AIRPORT

.....Respondent

Through: Mr. Digvijay Rai, Standing Counsel  
with Mr. Archit Mishra, Advocates  
with Mr. Vinod Kumar Singh, JGM  
(Engg-Civil), Mr. Gagan Kochar, Sr.  
Manager (Law) AAI, Ms. Pragya  
Bansal JE (Law) AAI, Ms. Kashish  
Singhal JE (Law) AAI and Mr.  
Shashank Gupta JE (Law) AAI for  
respondent AAI.  
(M): 9873103599, 9412636726  
[E-mail.digvijayrai@rediffmail.com](mailto:E-mail.digvijayrai@rediffmail.com)

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**MINI PUSHKARNA, J (ORAL):**

**I.A. Nos. 11833/2026 & 11834/2026 (For Exemptions)**

1. Exemptions allowed, subject to all just exceptions.



2. Applications are accordingly disposed of.

**O.M.P.(I) (COMM.) 185/2026 & I.A. No. 11835/2026**

3. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) assailing the letters dated 24<sup>th</sup> April, 2026, issued by the respondent to various banks for encashment of bank guarantees aggregating to Rs. 3,17,00,000/-.

4. Learned counsel for the petitioner submits that the said invocation/encashment is wholly arbitrary, illegal and unsustainable, particularly when the disputes between the parties are pending adjudication before the Dispute Resolution Committee (“DRC”), constituted under Clause 25 of the Agreement dated 04<sup>th</sup> June, 2019, entered into between the parties for work of upgradation of Jabalpur Airport.

5. Learned counsel appearing for the petitioner further submits that the petitioner had invoked Clause 25 of the Agreement on 19<sup>th</sup> January, 2026 for reference of disputes to the DRC, and thereafter to arbitration. However, the respondent has failed to effectively and promptly constitute a functional DRC, and thus, has failed to ensure timely adjudication of the disputes, as per the agreed contractual mechanism.

6. Learned counsel appearing for the petitioner submits that in another case with respect to a different project between the parties, a petition being *O.M.P.(I)(COMM.)118/2026* was filed on behalf of the petitioner, which came to be disposed of *vide* order dated 22<sup>nd</sup> April, 2026, in the following manner:

*“1. The present Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:*



*“A. Pass an order restraining the Respondent, its officers, agents and representatives from giving effect to, acting upon or enforcing the impugned letter dated 11.03.2026 whereby alleged recovery of Rs. 2,58,65,396/- has been demanded, which is arbitrary, illegal, pending resolution of disputes through the mediation and/or arbitration, and/or;*

*B. Pass an order restraining the Respondent from taking any coercive action but not limited to invoking, encashing or otherwise acting upon the Bank Guarantee(s) furnished by the Petitioner in relation to the subject contract, till the disputes are adjudicated in mediation and/or arbitration, and/or;*

*C. Pass an order directing the Respondent to maintain status quo with respect to the subject contract, including refraining from taking any coercive or prejudicial steps against the Petitioner pursuant to letter dated 11.03.2026, and/or;*

*D. Pass any other or further order(s) as this Hon<sup>ble</sup> Court may deem fit and proper in the facts and circumstances of the present case, in the interest of justice.”*

2. *At the outset, learned counsel appearing on behalf of the Petitioner submits that three (03) bank guarantees bearing No. 0960121BG0000381, 0960121BG0000552 and 0960122BG0000137 for an aggregate sum of Rs. 3,00,00,000/- have since been encashed.*

3. *She further submits that the request of the Petitioner for commencing the dispute resolution process, which includes the process of mediation, has not yet been responded to by the Respondent-Authority.*

4. *Mr. Rai, learned counsel appearing on behalf of the Respondent submits that since the disputes that have arisen as between the parties are approximately to the tune of Rs. 100 crores and since the mediation policy of the Respondent-Authority provides that disputes above a value of Rs. 10 crores would have to be referred to a panel of three Mediators, the same is currently under consideration and the Respondent-Authority is in the midst of nominating the panel of the Mediators to adjudicate upon the present dispute.*

5. *In view of the fact that the disputes are yet to be considered by the panel of Mediators, this Court is of the view that till such same that the disputes as raised are not accorded consideration, the Bank Guarantees would require to be safeguarded. Learned counsel appearing on behalf of the Respondent undertakes that prior to invocation of the Bank Guarantees, a Show Cause Notice would be issued providing the Petitioner with a period of one (01) week to respond to the same before invocation of the said Bank Guarantees.*



6. *In view of the undertaking given by the learned counsel for the Respondent, it is directed that the panel of Mediators be constituted within a period of ten (10) days from today for consideration of the disputes that are stated to have arisen. No coercive action in respect of the Bank Guarantees inter alia, issuance of Show Cause Notice, will be taken till the panel of Mediators takes up the issues for consideration.*

7. *Since the parties are ad idem that the present dispute shall be adjudicated by the panel of Mediators so appointed, this Court deems it appropriate to dispose of the present Petition.*

8. *Accordingly, the present Petition, along with pending application(s), if any, stands disposed of in the above terms.”*

7. Learned counsel appearing for the petitioner further draws the attention of this Court to *Document No. 34* attached with the present petition, to submit that the extension of time has been approved till 16<sup>th</sup> September, 2023, whereas, the competent authority has allowed such extension of time to the petitioner only till the year 2022, on account of which, penalty has also been imposed upon the petitioner.

8. It is submitted that the delay is not on account of the petitioner since extension of time has already been granted. Thus, she submits that no penalty could have been imposed upon the petitioner.

9. *Per contra*, learned counsel appearing for the respondent, on advance notice, submits that the respondent is within its right to encash the bank guarantees. He submits that six (06) bank guarantees were sent for encashment, out of which, four (04) already stand encashed and that two (02) bank guarantees have already been processed by the banks for the purposes of encashment.

10. He draws the attention of this Court to one of the bank guarantees deposited for Rs. 50,00,000/- by the petitioner, relevant portion of which,



reads as under:

“xxx xxx xxx

1. In consideration of the **Airport Authority of India** having its head office at New Delhi (hereinafter called the “AAI” which expression shall unless repugnant to the subject or context include its administrators, successors and assigns) having agreed under the terms and condition of Contract Agreement No. **AAI/JABALPUR/W-29/ENGG.(C) Dated 04-06-2019** made between **M/s NKG Infrastructure Ltd, having its Registered & Corporate Office: 204, Kailash Building, 26, K.G., Marg New Delhi-110001** and **AAI** in connection with the work of “**Upgradation of Jabalpur Airport to make it suitable for operation of AB-320 type of Aircraft. SH: Construction of New Terminal Building, ATC Tower Cum Technical Block, Fire Station Category-VII, other building and associated works at Jabalpur Airport, Jabalpur.**” (hereinafter called the said contract) to accept Deed of Guarantee as herein provided for **Rs. 50,00,000/- (Rupees Fifty Lacs Only)** from a **State Bank of India, IFB, 15th Floor,1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi** bank and having our registered office at **State Bank of India, State Bank Bhavan, Corporate Centre, Madame Cama Marg, Mumbai Maharashtra – 400021** in lieu of the Security deposit to be made by the contractor, contained in the said contract. We, the **State Bank of India IFB, 15th Floor,1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi** bank and having our registered office at **State Bank of India, State Bank Bhavan, Corporate Centre, Madame Cama Marg, Mumbai Maharashtra – 400021** do hereby undertake and agree to indemnify and keep indemnified **AAI** from time to time to the extent of **Rs. 50,00,000/- (Rupees Fifty Lacs Only)** against any loss or damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by **AAI** by reason of any breach or breaches by the said Contractor of any of the terms and condition contained in the said contract and to unconditionally pay the amount claimed by **AAI** on demand and without demur to the extent aforesaid.

xxx xxx xxx”

11. By referring to the aforesaid, learned counsel appearing for the respondent submits that in the bank guarantee, the banks have undertaken to unconditionally pay the amount claimed by the respondent on demand and without any demur to the extent thereof.

12. Likewise, learned counsel appearing for the respondent also draws the attention of this Court to the bank guarantee deposited by the petitioner for **Rs. 25,00,000/-**, to submit that in the said bank guarantee as well, the bank has undertaken to make payment of the amount claimed by respondent, without any demur. The relevant portion of said bank guarantee is as under:

“xxx xxx xxx



2026:DHC:3653



1. In consideration of the **Airport Authority of India** having its head office at New Delhi (hereinafter called the "AAI" which expression shall unless repugnant to the subject or context include its administrators, successors and assigns) having agreed under the terms and condition of Contract Agreement No. **AAI/JABALPUR/W-29/ENGG.(C) Dated 04-06-2019** made between **M/s NKG Infrastructure Ltd. having its Registered & Corporate Office:- 204, Kailash Building, 26, K.G. Marg New Delhi-110001** and AAI in connection with the work of "**Upgradation of Jabalpur Airport to make it suitable for operation of AB-320 type of Aircraft. SH: Construction of New Terminal Building, ATC Tower Cum Technical Block, Fire Station Category-VII, other building and associated works at Jabalpur Airport, Jabalpur.**" (hereinafter called the said contract) to accept Deed of Guarantee as herein provided for **Rs. 25,00,000/- (Rupees Twenty Five Lacs Only)** from a **State Bank of India, IFB, 15th Floor,1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi** bank and having our registered office at **State Bank of India, State Bank Bhavan, Corporate Centre, Madame Cama Marg, Mumbai Maharashtra – 400021** in lieu of the Security deposit to be made by the contractor, contained in the said contract. We, the **State Bank of India IFB, 15th Floor,1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi** bank and having our registered office at **State Bank of India, State Bank Bhavan, Corporate Centre, Madame Cama Marg, Mumbai Maharashtra – 400021** do hereby undertake and agree to indemnify and keep indemnified AAI from time to time to the extent of **Rs. 25,00,000/- (Rupees Twenty Five Lacs Only)** against any loss or damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by AAI by reason of any breach or breaches by the said Contractor of any of the terms and condition contained in the said contract and to unconditionally pay the amount claimed by AAI on demand and without demur to the extent aforesaid.

xxx xxx xxx ”

13. He further submits that bank guarantee is a separate contract, and one that is unconditional. He, thus, submits that once a bank guarantee has been invoked by the respondent, the same is payable. It is only in cases of fraud, irreparable loss, or if the invocation is not in terms of the bank guarantee, that the Court can interdict the invocation. However, the same is not the position in the present case.
14. Learned counsel appearing for the respondent has also handed over to this Court a letter dated 15<sup>th</sup> April, 2026, which is reproduced as under:



2026:DHC:3653



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भारतीय विमानपत्तन प्राधिकरण  
AIRPORTS AUTHORITY OF INDIA  
जबलपुर हवाईअड्डा, जबलपुर  
JABALPUR AIRPORT, JABALPUR-482005

Ref. No.: टर्मिनल/CA/03/2025-26/663

Date : 15/04/2026

**REMINDER - I**

प्रति,

मेसर्स एन.के.जी.आई.एल. इन्फ्रा.लि.  
204, कैलाश बिल्डिंग, 26,  
के.जी.मार्ग, नई दिल्ली-110001  
ई-मेल: nkg@nkginfra.com

- कार्य का नाम** - जबलपुर एयरपोर्ट पर एअरबस-320 के प्रचालन हेतु उत्थान कार्य।  
- जबलपुर एयरपोर्ट पर नई टर्मिनल बिल्डिंग, ए. टी. सी. टावर एवं टेकनिकल ब्लॉक, कैटेगरी VII फ़ायर स्टेशन, अन्य इमारतें एवं संबद्ध निर्माण कार्य।
- विषय** - Submission of GST invoice and signing of the 93rd & Final Bill.
- सन्दर्भ** -  
1. PMC mail dtd 02.03.2026.  
2. AAI letter no. टर्मिनल/CA/03/2025-26/656 dtd 02.03.2026  
3. PMC mail dtd 08.04.2026 and mail dtd 15.04.2026.

महोदय,

1. Please go through attached PMC mail dtd. 08.04.2026 and 15.04.2026.
2. The final measurement were completed and paid in 92<sup>nd</sup> RA bill.
3. Now final bill is prepared consisting of escalation bill for amounts of Rs. 1,97,65,995.01 + 18% GST of Rs. 35,57,879.10 = Rs. 2,33,23,874/-. You are instructed to submit the GST invoice of Rs. 2,33,23,874 for final bill. Other details are mentioned in attached PMC mail dtd. 08.04.2026 and 15.04.2026.
4. You are requested sign the final bill so bill can be sent to finance for further action of payment.
5. If you fails to sign the final bill by 22.04.2026 it will send to finance without further information.
6. Accordingly you are instructed to deposit either Rs. 3,20,10,000/- (when you submitted the GST invoice of Rs 2,33,23,874/-) or Rs. 3,56,00,000/- (when you fail to issue GST invoice of Rs. 2,33,23,874/-) in AAI account within 7 working days, if you fails to deposit above amount upto 22.04.2026 in AAI account, it will be recovered from your SD / available BG with AAI.

भवदीय,

(विनोद कुमार सिंह)

संयुक्त महाप्रबंधक (अभि-सि)-EIC  
भा.वि.प्रा., जबलपुर एयरपोर्ट

जबलपुर हवाईअड्डा, जबलपुर-482005

Jabalpur Airport, Jabalpur-482005

15. By referring to the aforesaid letter, learned counsel appearing for the respondent submits that the final bill has already been prepared by the respondent for the amounts which are payable by the petitioner. However, it is submitted that despite reminder, the petitioner has not approached the



respondent for signing the said final bill, on account of which, the bank guarantees are sought to be encashed.

16. Having heard, learned counsels appearing for the parties, this Court takes note of the submission made by learned counsel appearing for the respondent that pursuant to the invocation of Clause 25 by the petitioner, the DRC has already been constituted and that the last hearing before the DRC was on 23<sup>rd</sup> April, 2026.

17. It is to be noted that the dispute resolution clause between the parties, in terms of Clause 25, of the Agreement reads as under:

**CLAUSE 25**

<b>Dispute Resolution Mechanism and Arbitration</b>	<p>Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question , claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the work or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:</p> <p>i. If the contractor considers any work demanded of him to be out side the requirement of the contract, or disputes any drawing, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed such party shall promptly within 15 days of the arising of the disputes request the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI as, the case may be, who shall refer the dispute to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any, in respect of each such disputes. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for written response, and give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate / legal counsel etc.</p>
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2026:DHC:3653



If the Dispute Redressal Committee (DRC) fails to give its decision within aforesaid period or any party is dis-satisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI as the case may be for appointment of Arbitrator on prescribed proforma as per Appendix-XVII.under intimation to the other party.

It is also a term of contract and each party invoking Arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking Arbitration.

The Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer in Charge to Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator, who shall act as the presiding arbitrator. In the event of :

- a. A party fails to appoint the second arbitrator, or
- b. The two appointed arbitrators fail to appoint the Presiding Arbitrator, then Member (Plg)/Chairman,AAI shall appoint the second or Presiding Arbitrator as the case may be.



ii Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where tendered amount is Rs. 100.00 Cr or less. Where tendered value is more than Rs. 100.00 Cr., Tribunal shall consist of three arbitrators as above. The requirements of the arbitration and the conciliation act, 1996 (26 of 1996) and any further statutory modifications or reenactment thereof and the rules made thereunder and for the time being in force shall be applicable.

It is a term of this contract that the party invoking Arbitration shall give a list of disputes with amounts, claimed, if any, in respect of each such disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC.

It is also term of this contract that any member of Arbitration Tribunal shall be a graduate engineer with experience in handling public works, engineering contracts at a level not lower than Chief Engineer. This shall be treated as mandatory qualification to be appointed as Arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of rereference by the Appointing Authority, the Arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each disputes and claim referred to him and in all cases where the total amount of the claims by any party exceed Rs. 1,00,000/-, the Arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims.

The place of the arbitration shall be mentioned in schedule 'F'. In case there is no mention of place of arbitration, the Arbitral Tribunal shall determine the place of arbitration. The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.



18. Accordingly, since hearing is already being granted and the matter is being taken up by the DRC in terms of Clause 25 of the Agreement between the parties, it is directed that no further precipitative action shall be taken by the respondent against the petitioner, till the proceedings before the DRC are finally adjudicated.

19. The respondent shall also not take coercive action against the petitioner for a further period of 10 days after the decision by the DRC in the proceedings, as aforesaid.

20. It is clarified that the present order shall not apply to the two bank guarantees, which have already been processed for encashment.

21. Accordingly, with the aforesaid directions, the present petition, along with the pending application, is disposed of.

**MINI PUSHKARNA, J**

**APRIL 28, 2026**

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