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

Judgment reserved on: 02.02.2026
Judgment pronounced on: 12.02.2026

\+ O.M.P.(I) (COMM.) 42/2026, I.A. 2954/2026 (Exemption from filing true typed copies of dim or illegible annexures) & I.A. 2955/2026 (Seeking exemption from filing synopsis and list of dates with five pages)

M/S SAFETY CONTROLS AND DEVICES LTD.

.....Petitioner

Through: Mr. Gautam Narayan, Senior Advocate along with Mr. Talha Abdul Rahman, Mr. Utsav Misra, Mr. Sudhanshu Tewari, Mr. Faizan Ahmed and Ms. Asmita Singh, Advocates.

versus

NTPC RENEWABLE ENERGY LIMITED AND ORS

.....Respondents

Through: Mr. Gopal Jain, Senior Advocate along with Mr. Anish Gupta, Mr. Kapil Paliwal and Ms. Mehak Arora, Advocates with Mr. Abhishek Singh, Law Officer, NTPC REL.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition under Section 9 of the **Arbitration and Conciliation Act, 1996**[1] has been filed on behalf of **M/s Safety**

[1] The Act

Controls and Devices Ltd.[2], seeking *ad-interim* and interim measures restraining Respondent No.1 from acting upon, encashing and/or appropriating the Advance Bank Guarantee and Insurance Surety Bonds furnished by the Petitioner under **Agreements bearing Reference No. NRE-CS-5800-004(SS1)-9-FC-COA-207 & NRE-CS-5800-004(SS1)-9-SC-COA-208 both dated 12.03.2025 for 'Substation Package of 945MVA Capacity for Power Evacuation from Solar PV Projects at Bikaner, Rajasthan'**[3]. The prayer clause to the instant petition reads as follows:

> "…..
>
> a) Pass an ex-parte ad-interim order restraining and injuncting the Respondents, its officers, servants, agents, representatives and all persons claiming through or under it from receiving, demanding, claiming, or in any manner whatsoever dealing with any payment or proceeds under Bank Guarantee No. VWHGOPG252530083 dated 10.09.2025 for Rs. 8,71,60,919/- issued by Canara Bank, Mid Corporate Branch (19855), Lucknow, and/or Insurance Surety Bond No. 42250050255100000029 dated 25.07.2025 for Rs. 10,44,48,379.77/- issued by the New India Assurance Co. Ltd., and/or Insurance Surety Bond No. 42250050255100000030 dated 25.07.2025 for Rs. Rs. 3,29,83,167.42/- issued by the New India Assurance Co. Ltd., and/or any other Bank Guarantees, Insurance Surety Bonds, securities, or deposits furnished by the Petitioner in relation to Contract Nos. NRE-CS-5800-004(SS1)-9-FCCOA-207 & NRE-CS-5800-004(SS1)-9-SC-COA-208 both dated 12.03.2025;
>
> b) Pass an ex-parte ad-interim order directing Canara Bank, Mid Corporate Branch (19855), 4/11, Vishal Khand, Gomti Nagar, Lucknow – 226010, Uttar Pradesh, The New India Assurance Co. Ltd., and all other concerned banks and insurance companies to not encash, honor, remit, pay, or in any manner give effect to any invocation or demand made by the Respondent No.1 in respect of Bank Guarantee No. VWHGOPG252530083 dated 10.09.2025 for Rs. 8,71,60,919/- and/or Insurance Surety Bond No. 42250050255100000029 dated 25.07.2025 for Rs. 10,44,48,379.77/- and/or Insurance Surety Bond No. 42250050255100000030 dated 25.07.2025 for Rs. Rs. 3,29,83,167.42/- issued by the New India Assurance Co. Ltd.,

[2] The Petitioner
[3] Agreement

and/or any other Bank Guarantees, Insurance Surety Bonds, securities, or deposits furnished by the Petitioner in relation to the aforesaid Contract;

c) Pass an order staying any action pursuant to the Invocation Letter dated 31.01.2026 bearing reference no. NREL/RJ/945MVA/15 issued by the Respondent No.1 to Canara Bank in respect of Bank Guarantee No. VWHGOPG252530083;

d) Pass an order restraining the Respondent No.1 from invoking, encashing, acting upon or receiving any proceeds under any Insurance Surety Bonds furnished by the Petitioner in relation to Contract Nos. COA-207 and COA-208

e) Direct the Respondent No.1 to maintain complete status quo with regard to the Bank Guarantees, securities, and deposits and Surety Bonds furnished by the Petitioner during the pendency of the present Petition and the subsequent Arbitral Proceedings;

f) Award costs of the present Petition to the Petitioner;

g) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice, equity and good conscience."

BRIEF FACTS:

2. A brief conspectus of the relevant facts, as borne out from the record, is as follows:

I. The present petition has been filed seeking interim protection in respect of the invocation of an Advance Bank Guarantee amounting to ₹8,71,60,919/- and Insurance Surety Bonds aggregating to ₹13,74,31,547.19 furnished by the Petitioner in connection with the Agreement awarded by Respondent No.1.

II. Pursuant to a competitive bidding process initiated under Notice Inviting Tender dated 13.12.2023, Respondent No.1 issued a Notification of Award dated 14.01.2025 in favour of the Petitioner for execution of the "Substation Package of 945 MVA Capacity for Power Evacuation from Solar PV Projects at Bikaner, Rajasthan".

III. Agreements bearing reference Nos. COA-207 and COA-208

were executed between the parties on 12.03.2025. The total contract value was ₹116,46,74,128.80/- exclusive of GST and ₹137,43,15,471.98/- inclusive of GST. The contractual time for completion stipulated under the Agreement was 24 months from the date of issuance of the Notification of Award.

IV. Under the terms of the Agreement, the obligations of the parties were reciprocal. The Respondent No.1 was required, *inter alia*, to provide access to encumbrance-free land, right of way, technical inputs, and approvals necessary for commencement and progress of the works, while the Petitioner was required to execute the works in accordance with the contractual schedule.

V. The site was handed over to the Petitioner on 07.04.2025. The Petitioner contends that the said handover occurred several months after the award of the contract and that the land handed over did not fully correspond with the tender coordinates.

VI. During the course of execution, the Petitioner sought various technical inputs and approvals from Respondent No.1, including Current Transformer and Capacitor Voltage Transformer sizing data, protection parameters, and approvals of engineering and layout drawings. The Petitioner asserts that such inputs were furnished over an extended period, with certain data being provided only in October 2025.

VII. In accordance with the contractual requirements relating to advance payments, the Petitioner furnished an Advance Bank Guarantee dated 10.09.2025 issued by Canara Bank for an amount of ₹8,71,60,919/-, valid up to 13.04.2027. The Petitioner also furnished two Insurance Surety Bonds dated 25.07.2025 issued by New India Assurance Co. Ltd. for

amounts of ₹10,44,48,379.77/- and ₹3,29,83,167.42/-, valid up to 30.10.2028.

VIII. On 12.12.2025, Respondent No.1 issued a Notice of Contractor's Default to the Petitioner, alleging slow progress of work and requiring remedial action under the relevant provisions of the General Conditions of Contract.

IX. The Petitioner submitted a written reply dated 20.12.2025 disputing the allegations contained in the Notice of Default and attributing delays to factors including site handover, approvals, and technical inputs.

X. On 21.01.2026, representatives of the Petitioner and Respondent No.1 met at the project site. According to the Petitioner, discussions were held regarding progress and the submission of a recovery plan.

XI. Thereafter, by letter dated 30.01.2026, Respondent No. 1 terminated the Agreement under Clause 42.2.2 of the General Conditions of Contract, alleging continued contractor default.

XII. On the following day, i.e., 31.01.2026, Respondent No.1 issued an invocation letter to Canara Bank seeking encashment of the Advance Bank Guarantee for an amount of ₹8,54,00,919/-. The Petitioner also apprehends the invocation of the Insurance Surety Bonds furnished under the Agreement.

XIII. The Petitioner asserts that substantial investments had been made towards the procurement of equipment and mobilisation for the project prior to termination and that civil and preparatory works were in progress at the site.

XIV. The Agreement between the parties contains an arbitration clause providing for the resolution of disputes through

arbitration with the seat at Delhi. The Petitioner states that disputes arising from the termination of the Agreement and invocation of securities are intended to be referred to arbitration.

3. The present petition has been filed immediately after the termination of the Agreement and invocation of the Advance Bank Guarantee, seeking interim protection pending resolution of disputes between the parties.

CONTENTIONS ON BEHALF OF THE PETITIONER:

4. Learned Senior Counsel appearing on behalf of the Petitioner would contend that although the Agreements prescribed certain timelines for execution, adherence to the said timelines was rendered impracticable on account of delays occasioned by Respondent No. 1 under the Agreement.

5. He would submit that the principal impediment arose at the threshold stage of the project itself, inasmuch as site mobilisation, which was contractually required to be facilitated by Respondent No. 1, was effected belatedly, thereby materially impacting the Petitioner's ability to commence and progress the works in accordance with the agreed schedule.

6. Learned Senior Counsel would submit that the present petition is confined to seeking interdiction of the encashment of the Bank Guarantees, and in particular, the Advance Bank Guarantee. He would clarify that, for the purposes of the present proceedings, the Petitioner is limiting its challenge to the invocation of the said Bank Guarantee on the singular and well-recognised ground of the invocation being vitiated by egregious fraud, which, according to him, squarely attracts the limited exceptions carved out in law for judicial interference with

unconditional bank guarantees.

7. In support of the aforesaid submission, learned Senior Counsel would invite the attention of this Court to the broad factual matrix borne out from the record, with particular emphasis on the delay in handing over the site and the withholding of essential technical inputs and approvals.

8. He would specifically rely upon the contractual default notice dated 12.12.2025, and submit that critical drawings and technical inputs were made available only on 11.12.2025. It would be contended that the issuance of the default notice within a day thereafter unmistakably reflects a pre-determined approach, which, according to learned Senior Counsel, amounts to fraud in law, vitiating the subsequent termination and the invocation of the Bank Guarantee.

9. Learned Senior Counsel would further contend that the contractual duration for completion of the project was twenty-four (24) months, and in such circumstances, no occasion arose for premature termination of the Agreement in the manner adopted by the Respondents.

10. He would submit that the assertion contained in the notices issued under the Agreement, to the effect that only 2.9% of the contract value stood executed, is misconceived and misleading, particularly when viewed in the context of the admitted delays attributable to the issuer itself. He would urge that the alleged non-performance cannot be divorced from the Respondent's own defaults, and consequently, the drastic measures of termination and encashment of the Bank Guarantee are wholly disproportionate and unsupported by the contractual framework.

CONTENTIONS ON BEHALF OF THE RESPONDENTS:

11. ***Per contra***, learned Senior Counsel appearing on behalf of the Respondent would contend that the Bank Guarantee in question is an Advance Bank Guarantee, furnished by the Petitioner to secure the advance amounts released at the commencement of the Agreement. He would submit that once the Agreement has come to be terminated in accordance with its terms, the beneficiary under the Bank Guarantee became contractually entitled to invoke the same, and the invocation in the present case is strictly in consonance with the contractual framework.

12. Learned Senior Counsel would further submit that the terms of the Bank Guarantee are clear, unequivocal, and unconditional, and do not make encashment contingent upon adjudication of disputes or determination of breach. He would contend that settled law mandates that courts ordinarily do not interfere with the invocation of unconditional bank guarantees and that no exceptional circumstance has been demonstrated warranting departure from this rule. He would submit that the validity or otherwise of the termination, and any issues pertaining to performance of the Agreement, fall squarely within the domain of arbitration and cannot form the basis for interdiction of the Bank Guarantee.

13. Learned Senior Counsel would also submit that, as a matter of record, no substantive work was executed at the site, and that neither the pleadings nor the submissions advanced on behalf of the Petitioner disclose any material that would establish the existence of fraud of an egregious nature. He would contend that mere allegations of delay or dispute regarding contractual performance do not meet the stringent threshold required to attract the fraud exception, and, in the absence of

such exceptional circumstances, this Court ought not to interdict the encashment of the Bank Guarantee.

ANALYSIS:

14. This Court has heard the learned Senior Counsel for the parties at considerable length and, with their able assistance, undertaken a detailed, careful, and comprehensive examination of the entire record.

15. The solitary issue that arises for determination in the present *lis* is whether the invocation of the Advance Bank Guarantee, being unconditional in nature, is liable to be interdicted in exercise of jurisdiction under Section 9 of the Act.

16. At the outset, this Court deems it appropriate to advert to Section 9 of the Act, in order to appreciate the statutory framework governing the present adjudication, which reads as under:

> "**9. Interim measures, etc., by Court.**— [(*1*)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—
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> (*i*) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
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> (*ii*) for an interim measure of protection in respect of any of the following matters, namely:—
>
> (*a*) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
>
> (*b*) securing the amount in dispute in the arbitration;
>
> (*c*) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
>
> (*d*) interim injunction or the appointment of a receiver;
>
> (*e*) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court

> shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.
>
> [(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.
>
> (3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]"

17. Before adverting to the rival submissions, it is necessary to underscore that the jurisdiction of this Court under Section 9 of the Act is circumscribed and intended only to grant interim measures of protection, and does not extend to a determination of the merits of the underlying contractual disputes between the parties. The law with regard to the scope and jurisdiction of the Court under Section 9 of the Act is no longer *res integra*. In ***ArcelorMittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[4], the Hon'ble Supreme Court has expounded the contours of such jurisdiction in the following terms:

> "**88.** Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.
>
> **89.** The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.
>
> **90.** It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties be remitted to their remedy under Section 17.
>
> **91.** When an application has already been taken up for consideration and is in the process of consideration or has already

[4] (2022) 1 SCC 712.

> been considered, the question of examining whether remedy under Section 17 is efficacious or not would not arise. The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy under Section 17 inefficacious. To cite an example, the different arbitrators constituting an Arbitral Tribunal could be located at far away places and not in a position to assemble immediately. In such a case, an application for urgent interim relief may have to be entertained by the Court under Section 9(1)."

18. It is well settled that courts ought not to interfere with the invocation of a bank guarantee except in cases of egregious fraud or where encashment would result in irretrievable injustice. In ***Hindustan Construction Co. Ltd. v. State of Bihar & Ors.***[5], the Hon'ble Supreme Court underscored that bank guarantees form the backbone of commercial transactions and must ordinarily be honoured strictly in accordance with their terms. The relevant observations are as under:

> **"8.** Now, a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realise the whole of the amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary. In contracts awarded to private individuals by the Government, which involve huge expenditure, as, for example, construction contracts, bank guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as "advance" from time to time during the course of the contract as also to secure performance of the work entrusted under the contract. Such guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the Government "advance", the guarantee is invoked and the amount is recovered from the bank. It is for this reason that the courts are reluctant in granting an injunction against the invocation of bank guarantee, except in the case of fraud, which should be an established fraud, or where irretrievable injury was likely to be caused to the guarantor. This was the principle laid down by this Court in various decisions. In ***U.P. Coop. Federation Ltd.*** **v.** ***Singh***

[5] (1999) 8 SCC 436

> ***Consultants & Engineers (P) Ltd.*** **[(1988) 1 SCC 174]** the law laid down in ***Bolivinter Oil SA*** **v.** ***Chase Manhattan Bank*** **[(1984) 1 All ER 351 (CA)]** was approved and it was held that an unconditional bank guarantee could be invoked in terms thereof by the person in whose favour the bank guarantee was given and the courts would not grant any injunction restraining the invocation except in the case of fraud or irretrievable injury. In ***Svenska Handelsbanken*** **v.** ***Indian Charge Chrome*** **[(1994) 1 SCC 502],** ***Larsen & Toubro Ltd.*** **v.** ***Maharashtra SEB*** **[(1995) 6 SCC 68] ,** ***Hindustan Steel Workers Construction Ltd.*** **v.** ***G.S. Atwal & Co. (Engineers) (P) Ltd.*** **[(1995) 6 SCC 76],** ***National Thermal Power Corpn. Ltd.*** **v.** ***Flowmore (P) Ltd.*** **[(1995) 4 SCC 515],** ***State of Maharashtra*** **v.** ***National Construction Co.*** **[(1996) 1 SCC 735] ,** ***Hindustan Steelworks Construction Ltd.*** **v.** ***Tarapore & Co.*** **[(1996) 5 SCC 34]** as also in ***U.P. State Sugar Corpn.*** **v.** ***Sumac International Ltd.*** **[(1997) 1 SCC 568]** the same principle has been laid down and reiterated."
>
> ***(emphasis added)***

19. It is apposite to reiterate a foundational principle that undergirds commercial law in this jurisdiction, *namely*, that a bank guarantee is not a mere appendage to the underlying contract but an independent and autonomous commercial instrument, the efficacy of which lies in its certainty and immediacy. Bank guarantees, particularly those furnished in large infrastructure and public utility projects, constitute the bloodstream of commercial confidence, enabling parties to undertake high-value and time-sensitive obligations on the assurance that risk allocation will not be unsettled by *post-facto* contractual controversies.

20. The very *raison d'être* of such instruments is to insulate their invocation from disputes arising out of contractual performance and to secure prompt liquidity to the beneficiary, subject only to the narrowly circumscribed exceptions recognised in law. Any routine judicial interdiction of such guarantees on the basis of contested contractual narratives would imperil the architecture of commercial certainty and erode the sanctity of irrevocable financial commitments.

21. Tested on the aforesaid anvil, the Bank Guarantee in the present case is an unconditional and uncaveated undertaking, the invocation of which is not contractually conditioned upon any prior adjudication, quantification of loss, or certification of breach.

22. This Court also notes, in this context, that learned Senior Counsel appearing for the Petitioner has been unable to draw the attention of this Court to any clause either in the Bank Guarantee or in the Agreements which conditions invocation upon a prior determination of fault or contractual performance, the Bank Guarantee, by its express terms, remaining autonomous and divorced from the disputes sought to be raised in the underlying contract.

23. At this juncture, this Court finds it apposite to refer to the judgment rendered by a co-ordinate Bench of this Court in ***Black Gold Resources Private Limited v. International Coal Ventures Pvt. Ltd. & Anr.*** [6], which dealt with a factual matrix closely analogous to the present case. In that matter as well, the controversy arose out of the termination of the underlying contract followed by the invocation of a bank guarantee.

24. The co-ordinate Bench clarified that disputes relating to the validity of termination or attribution of delay do not impinge upon the autonomous character of a bank guarantee and cannot, by themselves, justify judicial interdiction at the stage of invocation. It was further held that interference is warranted only where egregious fraud goes to the very root of the guarantee or where irretrievable injustice of an exceptional nature is demonstrated, issues concerning contractual performance and termination being matters reserved for adjudication before the arbitral forum. The relevant portions of the ***Black Gold***

[6] 2025 SCC OnLine Del 9231

Resources Private Limited (*supra*) are reproduced hereinafter:

> "**64.** There are primary two issues before this Court namely, (i) Whether injunction should be granted against termination of the Contract by the respondents? and (ii) Whether injunction should be granted against the invocation/encashment of the subject PBG?
> **65.** As for the issue of injunction against termination of the Contract is concerned, the Contract has been terminated on 03.03.2025. The petitioner approached this Court in March 2025 itself. The Court while issuing notice did not consider fit to grant interim relief of stay on the effect and operation of the impugned termination letter dated 03.03.2025. As per the paragraph No. 10 of the rejoinder affidavit on behalf of the petitioner, it is an admitted fact that the respondents after terminating the Contract have already selected a Chinese Company to conduct the mining operations over the same mine. Hence, the subject matter of the arbitral dispute namely rights of mining coal in the coal mines in question have already been granted to a Chinese Company. 66. Further, the learned senior counsels for the petitioner while contending that the termination of the Contract is in violation of Clause No. 13 of General Conditions of the Contract, as the Contract could not have been terminated while parties were in the process of dispute resolution and were under an obligation to continue performing their contractual obligations, have placed reliance on Innovative Facility Solutions (supra). In my view, the said judgement and other judgments relied upon the learned senior counsels for the petitioner to buttress the contention for injunction against termination of the Contract has no relevance, as the termination of the Contract has already taken effect and the respondents have already given a Chinese Company rights to conduct the mining operations over the same mine.
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> *****
>
> **69.** In this view of the matter, no injunction can now be granted against termination of the Contract. The issue whether the termination of the Contract is in accordance with the law and terms and conditions of the Contract and the Addendum shall be adjudicated by the Arbitral Tribunal, as and when raised.
> **70.** Additionally, as held by a Division Bench of this Court in National ***Highways Authority of India v. Bhubaneswar Expressway Private Limited***[9] the 1996 Act does not sanction two trials/adjudication that is one vide by the Court under Section 9 of the 1996 Act and another final adjudication by the Arbitral Tribunal. The intention of the legislature is clear that under Section 9 of the 1996 Act the merits of the matter are not be adjudicated upon and if the three-prong test is satisfied, then the Court must "preserve" the subject matter of the arbitral dispute and it will be for the Arbitral Tribunal to decide the disputes on merits. This Court is not to deliver findings on issues which require extensive evidence and pleadings, as the same exclusively lies within in the

domain of the Arbitral Tribunal.

71. For the said reasons, the issue one i.e., whether injunction should be granted against termination of the Contract is denied.

72. The only surviving question that remains before me is the issue pertaining to injunction against the invocation/encashment of the subject PBG.

73. The law with respect to grant of an injunction restraining encashment/invocation of a bank guarantee is well settled. In the foundational case of ***U.P. Coop. Federation*** (supra), the Hon‟ble Supreme Court, after extensively referring to English and Indian cases on the subject, held that bank guarantees are independent contracts and must be honoured in accordance with their terms and conditions. The Bank which gives the guarantee is not to be concerned with the disputes between the parties and just must pay according to the tenor of its guarantee on demand without proof or condition. The Court carved out two exceptions to this rule i.e., (i) fraud of an egregious nature and, (ii) special equities in form of preventing irretrievable injustice. The relevant paragraphs from the said judgment is extracted below:-

> "*28. I am, however, of the opinion that these observations must be strictly considered in the light of the principle enunciated. It is not the decision that there should be a prima facie case. In order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of bank guarantee, there should be serious dispute and there should be good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise the very purpose of bank guarantees would be negatived and the fabric of trading operation will get jeopardised*."
>
> ***(Emphasis added)***

74. The principles as laid down by the Hon'ble Supreme Court in *U.P. Coop. Federation* (supra) are being followed till date and reiterated in catena of judgments. In ***Himadri Chemicals Industries Ltd.* v. *Coal Tar Refining Co.***[10], while referring to *U.P. Coop. Federation* (supra), the Hon'ble Supreme Court elaborated the law on grant of injunction against a bank guarantee as following:—

> "*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."

(Emphasis added)

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81. To my mind, the issue whether the respondent paid excess for overburden volumes or paid them legally and legitimately or whether the respondent No. 2 has rightly or wrongly withheld payments are questions which require evidence and an adjudication of whether there was a fraud and collusion between the petitioner and the respondent No. 2's employee(s), as claimed by the respondent No. 2 and denied by the petitioner. This Court today in a Section 9 petition cannot adjudicate whether the termination of the Contract was right or wrong or whether the respondent No. 2 was entitled to recover the overburden charges already paid, as such issues touch the merit of the matter and are for the Arbitral Tribunal to decide.

82. The subject PBG is an unconditional bank guarantee and needs to be honoured in its entirety. The respondents have already terminated the Contract for breach. I am of the view that once the Contract had been terminated for breach (without commenting rightly or wrongly), the respondent No. 2 in terms of the PBG, in entitled to encash the PBG.

83. The learned senior counsels for the petitioner while relying on ***Hindustan Construction*** (supra) states that therein it was held that where the terms of a bank guarantee require a breach of contract, invocation must be in accordance with such terms.The said judgement is differentiable as the terms of the bank guarantee in Hindustan Construction (supra) were different from the subject PBG. The present PBG is unconditional and is encash able on mere decision of the respondent regarding breach of the Contract. The bank guarantee involved in Hindustan Construction (supra) had a condition that "… *in the event that the obligations expressed in the said clause of the above-mentioned contract have not been fulfilled by the contractor giving the right of claim to the employer for recovery of the whole or part of the advance mobilisation loan from the contractor under the contract*". The Hon"ble Supreme Court in Hindustan Construction (supra), relied upon the said wordings in the bank guarantee to restrain invocation of the bank guarantee.

84. In cases of unconditional and irrevocable bank guarantees, the Court may stay invocation only when there is egregious fraud, irretrievable injustice, or special equities. In the present case, the petitioner has pleaded special equities and irreparable injury. It is submitted that the invocation of the subject PBG on account of failure to return USD 30 million due to alleged incorrect computation of overburden volumes, is grossly disproportionate, as the respondents have already withheld USD 25 million from pending invoices. Further, it is also argued that the invocation of the PBG amounting to USD 10.5 million will cause severe financial hardship and irreparable injury to the petitioner.

85. As far as the issue of injunction on the invocation of the PBG is concerned, any reference to the dispute between the parties relating to the performance of the Contract, is completely irrelevant, as held in ***Himadri Chemicals Industries*** (supra), among many other judgements. The argument that the respondent has withheld USD 25 million from pending invoices is also a question which will be decided by the Arbitral Tribunal. Such dispute is to be adjudicated in the arbitral proceedings and I, in the present interim proceedings, am confined to deliberating on whether a case of special equities in form of preventing irretrievable injustice has been made out by the petitioner.

86. In ***Svenska Handelsbanken v. Indian Charge Chrome***[11], the Hon'ble Supreme Court observed that special equities partake the character of irretrievable injustice. The Court further noted that irrevocable Bank Guarantee should not be interfered with unless there is established irretrievable injustice involved in the case and the irretrievable injury has to be of the nature noticed in the case of ***Itek Corporation v. First National Bank of Boston***[12].The relevant paragraphs from the said judgment are extracted below:-

"*72.* Again in this very judgment Shetty, J. *referred to the*

observations of Mukharji, J. that there should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Mere irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee.

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88. The High Court was also in error in considering the question of balance of convenience. *In law relating to bank guarantees, a party seeking injunction from encashing of bank guarantee by the suppliers has to show prima facie case of established fraud and an irretrievable injury. Irretrievable injury is of the nature as noticed in the case of Itek Corpn. [566 Fed Supp 1210, 1217] Here there is no such problem. Once the plaintiff is able to establish fraud against the suppliers or suppliers-cum-lenders and obtains any decree for damages or diminution in price, there is no problem for effecting recoveries in a friendly country where the bankers and the suppliers are located.* Nothing has been pointed out to show that the decree passed by the Indian Courts could not be executable in Sweden.

(Emphasis added)

87. From the entire arguments of the learned counsels for the petitioner, no case of special equities and irreparable injury is made out. All that emerges is that there are disputes pertaining to calculation of overburden volumes removed by the petitioner, due to alleged collusion between the petitioner and respondent No. 2's employee(s) and in lieu of the same the respondent withheld payments and sought to invoke the subject PBG.

88. Irretrievable injustice, as an exception to the rule of non-interference with invocation/encashment of unconditional bank guarantee, is not fulfilled by mere pleading of loss or financial hardship. Any party who furnishes a PBG is at the risk of suffering its encashment, however, such a party also always has the legal remedy to sue for recovery due to wrongful encashment. Therefore, what the petitioner needed to prove was that it would be impossible for it to recover the PBG amount, if later the Arbitral Tribunal found the issue in its favour, as also observed by the Hon'ble Supreme Court in ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd.***[13]**,** especially in paragraph No.22, which reads as under:-

"*22. The second exception to the rule of granting injunction, i.e., the resulting of irretrievable injury, has to be such a circumstance which would make it impossible for the guarantor to reimburse himself, if he ultimately succeeds. This will have to be decisively established and it*

> *must be proved to the satisfaction of the court that there would be no possibility whatsoever of the recovery of the amount from the beneficiary, by way of restitution*."
>
> *****
>
> **90.** There is no pleading on record that the respondents are trying to evade the Jurisdiction of the Court or are alienating their assets, or any other ground which could adversely affect the recovery of the petitioner, if so ordered by the Arbitral Tribunal. Disputes pertaining to withholding of invoices and overburden measurement, fall within the exclusive jurisdiction of the Arbitral Tribunal and cannot override the PBG's unconditional wordings."

25. To augment the aforesaid position, a co-ordinate Bench of this Court in ***M/S KGK Engineers Pvt Ltd v. National Highways Authority of India & Anr.***[7], has held that where the underlying contract is determinable in nature, disputes arising from its termination do not, by themselves, furnish a ground to interdict the invocation of an advance, unconditional and uncaveated bank guarantee, judicial interference being warranted only upon a clear demonstration of egregious fraud or irretrievable injustice. The relevant portions of the said judgment are reproduced hereinbelow:

> "**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 –*

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(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 (e) 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."

26. Now adverting to the present factual matrix, this Court is unable to accept the submission advanced on behalf of the Petitioner that the subsistence of the contract in terms of its overall duration, or the alleged prematurity or unwarranted nature of the termination on the ground that only a minuscule portion of the work had been executed, by itself furnishes a ground to interdict the invocation of the Bank Guarantee.

27. Even if such contentions were to be assumed *arguendo* to be correct, they do not cross the high and exacting threshold required to establish egregious fraud. A dispute as to whether termination was justified, premature, or contractually untenable is a paradigmatic arbitrable controversy, one which lies squarely within the province of the arbitral forum chosen by the parties. Such disputes, however substantial, cannot be transmuted into a restraint upon an advance, unconditional and uncaveated bank guarantee, the invocation of which is contractually independent of adjudication on merits.

28. This court is of the view that fraud, in the law governing bank guarantees, occupies a narrow and exceptional domain. It is not established by allegations of unfairness, haste, procedural impropriety, or even by assertions of contractual breach. To qualify as fraud warranting judicial interdiction, the conduct alleged must be of such gravity as to vitiate the very foundation of the guarantee itself - something approaching a deliberate deceit practised upon the issuing bank or a demand made with knowledge that the beneficiary possesses no semblance of entitlement whatsoever. The material placed on record in the present case falls far short of disclosing circumstances of such character.

29. The termination of the Agreement, whether viewed in isolation or cumulatively alongside the surrounding correspondence and contemporaneous conduct, does not, in the considered opinion of this Court, disclose conduct so extraordinary, unconscionable, or *mala fide* as to warrant its classification as "egregious fraud" in law. To hold otherwise would be to efface the carefully preserved doctrinal distinction between contractual disputes on the one hand and fraud vitiating financial instruments on the other - a distinction which commercial jurisprudence has consciously and consistently guarded.

30. This Court is also mindful of the fact that the invocation of a bank guarantee, particularly one of substantial value, may entail serious financial consequences for the party furnishing it. However, commercial hardship, even if severe, does not *ipso facto* rise to the level of irretrievable injustice. The latter is attracted only where restitution is demonstrably impossible in law or in fact, rendering any eventual arbitral award illusory. No such circumstances have been established in the present case. The Petitioner has failed to

demonstrate that its remedies before the arbitral forum would be rendered nugatory by the invocation of the Bank Guarantee.

31. In conclusion, while the disputes between the parties are undoubtedly contentious and substantial, they do not fall within the narrowly circumscribed and exceptional categories that alone justify judicial interdiction of an advance, unconditional and uncaveated bank guarantee. To grant relief in the present case would not only unsettle settled law but would also dilute the commercial efficacy and credibility of bank guarantees as instruments of financial assurance - an outcome which this Court is neither inclined nor permitted to countenance.

DECISION:

32. In view of the foregoing discussion and the settled position of law governing judicial interference with the invocation of unconditional bank guarantees, this Court is of the considered opinion that no case is made out for the exercise of jurisdiction under Section 9 of the Act. There thus arises no occasion for this Court to interdict the invocation or encashment of the Advance Bank Guarantee forming the subject matter of the present proceedings.

33. Accordingly, this Petition, along with pending application(s), if any, stands dismissed, without prejudice to the rights and contentions of the parties to seek adjudication of their disputes before the appropriate arbitral forum.

34. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 12, 2026/tk/kr