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

% ***Judgment reserved on: 20.01.2026***
Judgment pronounced on:24.02.2026

\+ O.M.P.(I) (COMM.) 18/2026 & I.A. 1378/2026 (Ex.)

SADGURU ENGINEERS AND ALLIED SERVICES PVT LTD .....Petitioner

Through: Mr. Ashkrit Tiwari, Ms. Aditi Shrivastava, Mr. Kartik Pendharkar, Ms. Kanika Arora, Mr. Aman Kumar and Mr. Abhinav Akash, Advocates.

versus

NATIONAL HIGHWAYS INFRASTRUCTURE DEVELOPMENT CORPORATION LTD REPRESENTED BY ITS MANAGING DIRECTOR & ORS. .....Respondents

Through: Mr. Gopal Singh, Mr. Shivam Singh and Mr. Shubham Janghu, Advocates for Respondent No. 1.
Mr. Santosh Kumar Rout, Standing Counsel for Respondent No. 2.
Ms. Devna Soni, Mr. Shivashish Dwivedi and Ms. Varsha Jain, Advocates for Respondent No. 4.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 9 of the

Arbitration and Conciliation Act, 1996[1], seeking the following reliefs:

> "**a.** Pass an *ex-parte ad-interim* order, thereby restraining the Respondents from invoking/ encashing the bank guarantees issued by the State Bank of India i.e., herein Respondent No.2; namely: -
> i. Performance Bank Guarantee No. 0151824BG0000014 for Rs.3,24,00,324/- dated 20.01.2024;
> ii. Mobilization Bank Guarantee No. 0151824BG0000057 for Rs.3,50,46,351/- dated 04.03.2024; and
> iii. Performance Bank Guarantee No. 0151824BG0000016 for INR. 1,89,00,019/- dated 20.01.2024
> **b.** Pass an order restraining Respondent No.1, its servants, employees and agents from terminating the contracts for Pkg-I and Pkg-IV, in as much as the EPC Contract is also "the subject matter of the arbitration agreement";
> **c.** Confirm the orders passed in terms of aforesaid Prayers 'a' and 'b' after notice to the Respondents;
> **d.** Award costs of the present proceedings in favour of the Petitioner and against the Respondents;
> **e.** Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

BRIEF FACTS:

2. **M/s Sadguru Engineers and Allied Services Pvt. Ltd.**[2], the **Engineering, Procurement and Construction**[3] Contractor herein, is a construction company incorporated under the Companies Act, 1956, having its registered office at 406, 4th Floor, Hanuman Tower, Athgaon, Guwahati, Assam-781001.

3. **National Highways & Infrastructure Development Corporation Ltd**[4] is a Central Public Sector Undertaking under the Ministry of Road Transport and Highways, Government of India, which, on 25.09.2023, issued certain tenders for execution of balance

[1] A&C Act
[2] Petitioner
[3] EPC
[4] NHIDCL/Respondent No.1

works of four-laning of **National Highway No.37 (Old)**[5], Jorhat-Jhanji stretch, under the EPC mode for **Package-I (consisting the Road Works)**[6] and **Package-IV (consisting the Structures & Toll Plaza)**[7].

4. The Petitioner emerged as the lowest bidder for the said tenders and was issued Letters of Acceptance dated 15.01.2024 for both packages. Pursuant thereto, **Contract Agreements dated 07.02.2024**[8] in respect of both said packages came to be executed with NHIDCL.

5. In compliance with the contractual stipulations, the Petitioner furnished **two Performance Bank Guarantees and a Mobilisation Bank Guarantee**[9], issued by **State Bank of India**[10] (through the Branch Manager), SME AT Road Branch, Guwahati-794106, aggregating to INR 8,63,46,694/-.

6. It is stated that the appointed date for commencement of works for both packages was fixed as 14.02.2024, and in the course of execution thereafter, the Petitioner achieved substantial progress, namely approximately 97% physical progress and 93.18% financial progress in Pkg-I, and 94.73% physical progress and 92.35% financial progress in Pkg-IV, as reflected in the Stage Payment Statements.

7. It is further stated that in pursuance thereof, certain applications seeking **Extension of Time**[11], including formal applications, were submitted by the Petitioner for completion of the balance of works. The Petitioner, however, asserted that delays in said completion of the

[5] NH-37
[6] Pkg-I
[7] Pkg-IV
[8] Agreements
[9] BGs
[10] Respondent No.2
[11] EOT

project occurred due to Authority Defaults and *Force Majeure* events, including non-availability of encumbrance-free right of way, flooding and unseasonal rainfall, obstruction by utility lines, delays by other contractors, and execution of additional works beyond the original scope. It is further the Petitioner's case that such extensions as sought by the Petitioner were either withheld by Respondent No.1 or made conditional upon execution of no-claim undertakings.

8. It is the Petitioner's case that the entire mobilisation advance stood fully recovered along with interest, yet the **Mobilisation Bank Guarantee**[12] was not released and was instead required to be extended without any contractual basis.

9. Notwithstanding the Petitioner's letter dated 05.01.2026, reiterating its readiness to complete the balance works by 28.02.2026, **Mr. Devendra Kumar**[13], General Manager (Projects), NHIDCL Project Monitoring Unit, Jorhat, Assam-785006, on **14.01.2026, issued a Letter presaging invocation of the bank guarantees**[14] and demanding additional performance security, followed by issuance of the **Termination Notice dated 15.01.2026**[15] alleging contractor default.

10. It is the Petitioner's case that Respondent No.3 is hand in glove with one **Mr. Shiva Harlalka, Proprietor of Kiraats Construction Pvt. Ltd.**[16] (formerly, Shiva Harlalka Pvt. Ltd.), having its registered office at Parmeshwari Building, 1st Floor, Chatribari Road, Guwahati-781001, who is a private contractor earlier engaged by Respondent

[12] MBG
[13] Respondent No.3
[14] Impugned Letter
[15] Termination Notice
[16] Respondent No.4

No.1. The Petitioner alleges that Respondent Nos. 3 and 4 have acted in concert with a common intention to misappropriate government-sanctioned funds allotted to the Petitioner for their personal gains.

11. Aggrieved by the said issuance of Termination Notice by Respondent No.3, the present Petition came to be filed seeking, *inter alia*, directions of this Court to the Respondents restraining them from encashing the BGs as well as terminating the Contract.

SUBMISSIONS OF THE PETITIONER:

12. Learned counsel for the Petitioner would state that he has been constrained to approach this Court due to the issuance of the Impugned Letter by which Respondent No.1 has sought to encash the BGs.

13. Learned counsel for the Petitioner would further submit that the invocation of the BGs is illegal, inasmuch as the Respondent No.1 seeks to encash them in respect of two separate aspects. It would be submitted that one of these aspects pertains to the alleged disputed and undisputed amounts claimed to be payable to various vendors.

14. In pursuance of said aspect, the learned counsel for the Petitioner would further submit that, in respect of one of the vendors, *namely* **M/s AB Industries**[17], there is no dispute regarding the existence of an undisputed outstanding amount of ₹81 lakhs. However, he would seriously dispute the alleged outstanding amounts, both disputed and undisputed, claimed in respect of **M/s Lummar Enterprise**[18]**,** as mentioned in the Impugned Letter at Para 5 (v). He would premise his objection to the inclusion of the said amounts on

[17] Vendor No.1
[18] Vendor No.2

two grounds, the first being the **Petitioner's Letter dated 07.07.2025**[19] , whereby the alleged amounts claimed to be payable to Vendor No.2 were disputed by him. He would state that in view of the same, the tabulation of dues as per the Impugned Letter is clearly ambiguous. Secondly, learned counsel for the Petitioner would further contend that, in any event, Vendor No.2 has initiated proceedings before the learned **National Company Law Tribunal**[20] in respect of the total amount alleged to be outstanding. In view thereof, it would be submitted that no occasion arises for Respondent No.1 to invoke the BGs, as any dues, if at all payable by the Petitioner to Vendor No.2, are now subject to adjudication in the proceedings pending before the learned NCLT. Consequently, the Impugned Letter is stated to be wholly unsustainable.

15. As respects the second aspect, the learned counsel for the Petitioner would submit that the calculation, as set out in Para 7 of the Impugned Letter, cannot form the subject matter for the purpose of invocation of the BGs, since the sum of Rs. 6.216 Crores as indicated in Para 7 of the said communication pertains to the alleged recovery of the funds released on assurances that were not honoured. Para 7 is reproduced for ready reference herein under:

> "**7.** Accordingly, the total amount presently claimed as payable by the EPCC to NHIDCL stands at Rs. 8.496 Crore (Rs. 2.28 Crore towards undisputed vendor dues, as set out above, and Rs. 6.216 Crore towards recovery of funds released on assurances which have not been honoured). The EPCC is hereby directed to forthwith remit the entire amount of Rs. 8,496 Crore to NHIDCL by 17.01.2026, without any demur or adjustment. Further, the EPCC shall furnish in favour of NHIDCL an unconditional and irrevocable BG of Rs. 2.50 Crore securing any potential exposure of NHIDCL arising out of the comfort letters, which amount is

[19] Petitioner's Letter
[20] NCLT

disputed by the EPCC and may, subject to the outcome of the ongoing litigation between the EPCC and the concerned vendor, be determined as payable by the EPCC. The BG, so submitted, shall be encashed only after a valid demand is raised against NHIDCL by the vendor; until such time, the BG is to be always kept renewed and valid by the EPCC at all times. The Account details for depositing the above-mentioned amounts are as follows:
Bank Name: Canara Bank
Branch: Specialised Govt Business Branch, Guwahati
A/c Name: RO NHIDCL PROJECTS
A/c No. : 73653210000013
IFSC: CNRB0007374"

16. The Petitioner would further submit that, as per the Agreements, as between the parties, the invocation of the BGs could only be in terms of the clauses as set out therein, particularly Para 7.3, which is extracted herein under: -

"**7.3 Appropriation of Performance Security**
(i) Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.
(ii) Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 23. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23. "

17. He would further submit that the Contractor's default as mentioned in aforesaid Clause 7.3, is defined in Clause 1.1 read with Clause 23.1, while Clause 1.1 defines "*Contractor Default to have the*

same meaning as set out in Clause 23.1". The said Clause 23.1 reads as follows:

> " **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-], 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 authorised by the Authority's Engineer;
>
> (f) the Project Completion Date does not occur within the period specified in Schedule-] 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 atleast 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 fulfil 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:

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

iv. for showing or forbearing to show favour or disfavour 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. "

18. Learned counsel for the Petitioner would further submit that the recovery of the said amount of Rs.6.216 Crores is not traceable in any of the conditions as set out in Clause 23.1 and resultantly, there arises no occasion for the Respondents to predicate the invocation of the

BGs on the alleged recovery of funds which were released on the alleged assurances that have allegedly not been honoured.

19. Learned counsel for the Petitioner would submit that the invocation of the BGs is patently illegal, inasmuch as even if only the terms of the BGs are taken into consideration for examining the legality of the invocation, the same clearly stipulate that invocation can be made only in the event of non-performance of obligations under the Contract and not on the basis of any alleged extra-contractual obligation between the parties.

20. The learned counsel for the Petitioner would further contend that the invocation of the BGs towards the alleged recovery of funds which were released on assurances but not honoured is not a contractual condition and in view of the same, the attempt on the part of the Respondent to invoke and encash said BGs is clearly unsustainable.

SUBMISSION OF THE RESPONDENTS:

21. ***Per Contra,*** learned counsel for the Respondents would submit that the interdiction of the encashment of the BGs has to be purely on the basis of the clauses as contained in said BGs themselves which forms a separate Agreement and the grounds under which such an invocation can be interdicted is if there is egregious fraud or a case of irretrievable injustice is made out and also if there are special equities in favour of the Petitioner.

22. The Respondents would further submit that in the present case, even a cursory reading of the various grounds relating to egregious fraud that have been taken would make it evident that there is, in fact, no ground made out in this respect. He would further submit that on

this ground, the invocation of the BGs cannot be interdicted.

23. With respect to the aspect as to whether there arose any special equities, the learned counsel for the Respondents would contend that no such special equities are also evident from the pleadings as well as the various arguments that have been canvassed by the learned counsel for the Petitioner.

24. Learned counsel for the Respondents would further submit that the invocation of the BGs for the purpose of recovery of funds is predicated on the alleged breach of Clause 23.1(i)(n) and the same is extracted herein under:

> "**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:
>
> *****
>
> (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;
>
> ….."

25. Learned counsel for the Respondents would further contend that the present Contracts are of a sensitive nature, inasmuch as they pertain to the construction of border roads, which are regarded as vital infrastructure and have also been a subject of deliberation in the Parliament of India.

26. Learned counsel for the Respondents would also contend that the Petitioner has miserably failed in performing his part of the

Contract and even as of this date, no work for advancing the project is being carried out at the site by the Petitioner.

27. Learned counsel for the Respondent would further submit that the main Promoter of the Petitioner-Company, i.e., Mr. Mukesh Jalan, is currently incarcerated and undergoing criminal investigation for various counts of fraud allegedly committed by him.

28. Learned counsel for the Respondent would also submit that by way of the Letter dated 07.06.2024, damages to the tune of 0.05% per day were imposed on the Petitioner and it is the non-payment of this amount which also led to the invocation of the BGs for the purpose of recovery of the said damages.

ANALYSIS:

29. Heard the learned counsel for the parties and, with their able assistance, perused the record and the various documents that have been filed and handed over to this Court across the bar.

30. It is apposite to emphasise that this Court remains acutely conscious of the fact that the present Petition has been filed under Section 9 of the A&C Act, and therefore, at this stage, the remit of this Court is confined to ensuring preservation of the subject matter of the dispute till such time as the same is adjudicated by the appropriate forum, i.e., the learned Arbitral Tribunal.

31. Additionally, in the considered view of this Court, having regard to the limited and protective nature of the jurisdiction exercised under Section 9 of the A&C Act, it is neither necessary nor appropriate to delve into a detailed examination of the factual matrix or to undertake an exhaustive examination of the various contractual clauses and documents relied upon by the parties, all of which are

matters to be considered by the learned Arbitral Tribunal.

32. The *raison d'être* of Section 9 of the A&C Act is to preserve and protect the subject matter of the dispute in the *interregnum*, so that the arbitral proceedings, when commenced, are not rendered nugatory. The power vested with the Courts under Section 9 is thus essentially protective and facilitative in character, intended to safeguard and secure the efficacy of the arbitral process and not to supplant it.

33. The Hon'ble Supreme Court, in a gamut of judgments, *inter alia*, in ***Sundaram Finance Ltd. v. NEPC India Ltd.***[21], ***Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.***[22] and ***Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd***[23], has authoritatively held that the jurisdiction of the Courts under Section 9 of the A&C Act can be exercised even prior to the constitution of the Arbitral Tribunal, with a view of safeguarding and preserving the subject-matter of the dispute till such time as the Arbitral Tribunal undertakes adjudication.

34. Further, a Division Bench of this Court, in ***M/s GTL Infrastructure Ltd. v. S.C. Wadhwa and Sons (HUF)***[24], has held that the powers of the Court under Section 9 of the A&C Act are of wide amplitude and are not circumscribed by the contours of interim reliefs contemplated under Order XXXIX of the **Civil Procedure Code, 1908**[25]. The Court observed that Section 9 vests broad discretion to grant such interim measures of protection as may be just and

[21] (1999) 2 SCC 479
[22] (2022) 1 SCC 712
[23] (2007) 7 SCC 125
[24] 2025:DHC:1475-DB
[25] CPC

convenient, including mandatory injunctions, where the circumstances so warrant. It was further emphasised that such powers are to be exercised to preserve the subject matter of arbitration and to ensure that the arbitral proceedings are not rendered futile or inefficacious. The relevant Para of ***M/s GTL Infrastructure Ltd.*** (supra) is reproduced herein under:

> "**14.** In the given facts, the contention that an order under Section 9 of the A&C Act could not be passed directing the appellant to remove the tower is unpersuasive. It is settled law that powers of a court under Section 9 of the A&C Act are wide and encompass such orders as are necessary to protect and preserve the subject matter of the arbitration, including issuing mandatory injunctions. The court must adopt a course, which is least likely to result injustice if the same is finally found to be wrong….."

35. In view of the foregoing discussion, this Court is of the considered opinion that no relief can be granted insofar as the stay of the effect and operation of the Termination Notice is concerned. It is a well-settled position of law that a Contract which is, by its very nature, determinable does not admit of an order of interdiction or stay restraining its termination. Any such restraint would, in effect, amount to enforcing the continuance of a contractual relationship which the law itself recognises as terminable, and is therefore impermissible.

36. The Hon'ble Supreme Court in ***Indian Oil Corporation vs. Amritsar Gas Service & Ors.***[26] has categorically held that granting a stay against termination of such a Contract, i.e., a Contract that is by its very nature determinable, would amount to enforcing a contractual relationship which the law expressly recognises as terminable, and is therefore impermissible. The relevant paragraph of the said decision is reproduced herein under for ready reference:

[26] (1991) 1 SCC 533

"12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

> "This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

(emphasis supplied)

37. Hence, in respect of Prayer Clause 'b', since the same pertains

to passing a direction restraining Respondent No.1 from terminating the Contracts, and in view of the foregoing discussion, this Court is of the considered view that no stay or injunction can be granted against the Termination Notice.

38. However, having due regard to the settled position of law as enunciated in ***M/s GTL Infrastructure Ltd.*** (*supra*), wherein it has been crystallised that, depending upon the facts and circumstances of a given case, Section 9 of the A&C Act, vests the Court with powers of granting interim reliefs broader than those contemplated under Order XXXIX of the CPC, the underlying rationale being the preservation of the subject matter of arbitration so as to ensure that the arbitral proceedings do not become futile. In furtherance thereof, and having regard to the facts and circumstances of the present case, this Court is of the considered view that the Petitioner has been able to establish a strong *prima facie* case warranting the grant of a limited interim protection.

39. In the aforesaid backdrop, this Court now turns to Prayer Clause 'a', which pertains to the restraint sought against the Respondents from invoking and encashing the BGs referred to therein.

40. At the outset, learned counsel for the Petitioner would submit that the ground of egregious fraud is not being pressed. The analysis, therefore, is limited to the question as to whether there are any special equities or irretrievable injustice or under the expressed terms of the BGs, there arises any occasion for the Respondents to invoke the same.

41. This Court considers it unnecessary to examine whether the facts disclose the existence of any special equities or whether the

present case is one of irretrievable injustice, as upon a conjoint reading of the clauses of the BGs and the relevant contractual provisions which govern the circumstances in which invocation may be made, it becomes apparent that the conditions precedent for such invocation have not arisen. The analysis, therefore, is confined to the terms of the BGs themselves and the question as to whether, in terms thereof, said invocation is at all permissible.

42. This Court would caveat the analysis with the statement that while adjudicating the present Petition, it is only expressing its *prima facie* opinion and the same will not be treated as a final adjudication on any of the issues or factual matrix of the present matter.

43. The relevant clauses of the BGs read as follows:

> "WHEREAS *M/s* Sadguru Engineers & Allied Services Private Limited [name and address of Contractor] (hereafter called the "Contractor") has undertaken, in pursuance of Letter of Acceptance (LOA) No. NHIDCL/ Assam/J-J/Pkg-1/232667/2955 Date 15.01.202 4 for construction of "Construction of Balance Work of the 4-laning of the Section from Jorhat to Jhanji of NH-37 (Old): Pkg-I: Road Works from Km 453+000 to Km 463+000(10.000 Km), under SARDP-NE, under EPC Mode" [name of the Project] (hereinafter called the "Contract")
>
> AND WHEREAS the Contract requires the Contractor to furnish an {Performance Security/ Additional Performance Security} for due and faithful performance of its obligations, under and in accordance with the Contract, during the {Construction Period/ Defects Liability Period and Maintenance Period} in a sum of Rs 3,24,00,324.00 (Rupees Three Crore Twenty-Four Lakhs Three Hundred and Twenty-Four Rupees only) (the **"Guarantee Amount").**
>
> AND WHEREAS we, State Bank of India through our branch at SME. AT.Road, Guwahati (the **"Bank")** have agreed to furnish this Bank Guarantee (hereinafter called the **"Guarantee")** by way of Performance Security.
>
> NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:
>
> 1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor's obligations during the {Construction Period/ Defects Liability Period and

> Maintenance Period} under and in accordance with the Contract, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
>
> A letter from the Authority, under the hand of an officer not below the rank of [General Manager of National Highways & Infrastructure Development Corporation Limited], 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 shall be conclusive, final and binding on the Bank. The Bank further agrees that the 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 and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
>
> ….”
>
> ***(emphasis supplied)***

44. As is manifest, the terms of the BGs are explicit and the invocation of the BGs can only be predicated on a breach of the terms of the Contract itself. The attempt of the Respondents to encash the BGs for the alleged recovery of funds, which were released on assurances that were not honoured, is therefore clearly unsustainable since these assurances were not assurances that were contractually set out. These assurances were extra contractual and, acting on which, the Respondent No.1 apparently has returned certain amounts that had been originally imposed as liquidated damages. A reading of Clause 23.1(i)(n) (*which is reproduced in the preceding paragraph*) clearly nuances that any representation or warranty, which may be found to be false or the Contract were to be found in breach or non-compliance

thereof, is to be such as is found in the Contract itself.

45. Learned counsel for the Respondents was unable to point out any such representation or warranty made by the Petitioner which is expressly stated in the Agreement itself and of which the Petitioner is stated to be in breach or non-compliance thereof. In view of the same, this Court is of the *prima facie* view that the alleged invocation of the BGs towards recovery of funds released on the basis of the assurances, clearly relates to the assurances which were not enshrined in the Agreement itself but were extra contractual and on the basis of which certain amounts came to be released.

46. This Court now turns toward the encashment of the BGs, allegedly on the grounds of certain outstanding undisputed as well as disputed dues by the Petitioner. Keeping in mind the fact that, except for the undisputed outstanding amount of ₹81 lakhs with respect to Vendor No.1, there is no other amount that can be termed as undisputed. Furthermore, since the concerned Vendor No.2 has already sought independent reliefs as against the Petitioner before the learned NCLT, this Court does not find it apposite to permit the Respondents to encash bank guarantees towards satisfaction of dues as against Vendor No.2.

47. The learned counsel for the Respondents would also contend that the amounts as sought to be encashed by way of BGs relate to the imposition of liquidated damages, which is provided for in Clause 10.3(iii) of the Agreements as between the parties, which is reproduced herein under:

> "**10.3** Construction of the Project Highway
>
> *****
>
> (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). ”

48. However, a perusal of the said Clause would make it obvious that any such damages that were to be recovered would be by way of deduction from the payments that were to be made to the Petitioner. The Respondents’ contention that invocation by operation of Clause 10.3 permits the recovery of the amounts thereof by way of invocation of the BGs, in view of this Court, is clearly unsustainable. As is manifest from a reading of Clause 23.1 and which is admittedly the only clause that, if contravened, would be relatable to the occasioning of invocation or the encashment of the BGs and since the recovery of damages is not specified therein, invocation of the BGs for the said purpose is clearly unsustainable.

49. The contention that MBG cannot be invoked since Clause 7.3 only enumerates the Performance Bank Guarantees and not the MBG, in the opinion of this Court, may not be entirely correct. The Petitioner, by its Letter dated 29.04.2025, had expressly agreed to the invocation of the MBG only in the event of its inability to clear the outstanding dues of the vendors. Whether such outstanding dues, in fact, subsist remains ambiguous and constitutes a matter requiring adjudication.

50. The net result of the above discussion is that there is only an

amount of ₹81 lakhs which is in fact admitted to be outstanding by the Petitioner to Vendor No.2, which is payable as per the terms and conditions of the Agreements and the various comfort letters that had been issued by NHIDCL/Respondent No. 1. There is no serious dispute to this factual aspect by the parties in the present matter.

51. It is further pertinent to note here that the present case pertains to **Conditional Bank Guarantees**[27] insofar as the BGs herein are to operate only upon the fulfilment of predefined contingencies, linked to contractor performance or contractual compliance, and are invocable only upon failure to satisfy such stipulated conditions, thereby serving as a protective safeguard for the project owner against possible contractual breach.

52. It is a well settled position of law that CBG do not warrant the application of a stringent or severe standard while considering the grant of stay against their invocation, particularly where such guarantees form part of the subject matter and their invocation, prior to adjudication, would render the ensuing arbitral proceedings infructuous and occasion irreparable injustice to the party against whom such guarantees are sought to be invoked.

53. The Hon'ble Supreme Court in ***M/S Jindal Steel & Power Ltd vs M/S Bansal Infra Projects Pvt. Ltd***[28] upheld the grant of stay on invocation of guarantees by the Odisha High Court, holding in clear terms that where refusal of injunction would result in the subject matter before the arbitral tribunal itself becoming infructuous, judicial intervention becomes imperative to preserve the same for effective

[27] CBG
[28] 2025 INSC 640

adjudication. The relevant Paras of ***M/S Jindal Steel & Power Ltd*** (*supra*)are extracted herein under:

> "**11.** We are aware of the established legal principle that the Courts should refrain from interfering with the invocation of a bank guarantee except in cases of fraud of an egregious nature or in cases where allowing encashment would result in irretrievable injustice. This Court in Hindustan Construction Co. Ltd v. State of Bihar and others5, emphasized that bank guarantees serve as the backbone of (1999) 8 SCC 436 commercial transactions and must be honoured in accordance with their terms. The following paragraphs are pertinent in this regard:
>
> > *"**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 Consultants & Engineers (P) Ltd.6, the law laid down in Bolivinter Oil SA v. Chase Manhattan Bank 7 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 Chrome8, Larsen & Toubro Ltd v. Maharashtra SEB9, Hindustan Steel Works Construction Ltd v. G.S. Atwal & Co. (Engineers) (P) Ltd 10, National Thermal*

Power Corporation Ltd v. Flowmore (P) Ltd11, State of Maharashtra v. National Construction Co.12, Hindustan Steel Works Construction Ltd v. Tarapore & Co.13 as also in U.P. State Sugar Corporation v. Sumac International Ltd 14, the same principle has been laid down and reiterated.

***9.** What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the bank guarantee; or else, the invocation itself would be bad."*

12. However, it cannot be disputed that after hearing both sides and with the consent of the parties, the High Court disposed of the writ petition by the order impugned herein, inter alia stating that if the appellants were permitted to invoke the bank guarantee, the prayer made in the Section 9 arbitration petition would likely become infructuous. Furthermore, the High Court clearly observed that the Commercial Court shall proceed in accordance with law and adjudicate upon the prayers made in the arbitration petition on its own merits, considering the pleadings and documents placed on record, without being influenced by any of the observations made therein. Ultimately, it was directed that the interim order restraining the appellants from encashing the bank guarantee shall remain in force until the disposal of the arbitration petition pending before the Commercial Court, subject to Respondent No. 1 extending the validity of the bank guarantee. Thus, we are of the view that the order passed by the High Court is merely an interim measure intended to protect the interests of both parties.

13. Admittedly, Respondent No. 1 initiated arbitration proceedings to resolve the disputes with the appellants. In the Section 9 arbitration petition filed by them, the arguments on behalf of Respondent No. 1 and Respondent No. 2 have already been concluded, and the matter stands partly heard, pending further arguments on behalf of the appellants. Furthermore, pursuant to the order dated 06.11.2024 passed by the High Court, an Arbitral Tribunal was constituted to adjudicate the disputes between the parties and a hearing was held on 03.01.2025, during which, the parties involved herein appeared and the Arbitral Tribunal directed them to file statement of claim, statement of defence and counter

> claim, if any, and reply to the same. Thus, in view of the ongoing arbitration proceedings concerning the bank guarantee, it is imperative to maintain the existing position regarding the bank guarantee until the final outcome of the Section 9 arbitration petition.
>
> ****
>
> **15.** Since the Section 9 arbitration petition is now ripe for arguments before the Commercial Court on behalf of the appellants, the parties are directed to advance all their contentions along with necessary documents, and the Commercial Court shall pass appropriate orders within a period of eight weeks thereafter. Until such time, the bank guarantee shall be kept alive and shall be subject to the outcome of the Section 9 arbitration petition."
>
> ***(emphasis supplied)***

54. In view of the foregoing analysis, and having regard to the facts and circumstances accruing in the present case, this Court is of the considered opinion that the balance of convenience tilts in favour of the Petitioner. The encashment of the said BGs at this stage would result in serious and irreparable prejudice to the Petitioner, which cannot be adequately compensated in monetary terms at a later stage, particularly if the Petitioner ultimately succeeds in the arbitral proceedings.

55. The issue pertaining to the legality and validity of the invocation of the BGs is inextricably intertwined with the underlying contractual disputes and the specific factual matrix of the case. Such questions necessarily require a detailed examination of the terms of the Contract, the circumstances leading to the invocation, and the conduct of the parties, an exercise that squarely falls within the domain of the learned Arbitral Tribunal.

56. Accordingly, this Court is of the view that the matter warrants adjudication by the appropriate forum, *namely*, the learned Arbitral Tribunal, and ought not to be conclusively determined at this interlocutory stage.

CONCLUSION:

57. Accordingly, having heard the parties at length with respect to Prayer Clause ‘a’ which is in respect of restraining the Respondents from the encashment of the BGs *namely*, Bank Guarantee No. 0151824BG0000014 for ₹3,24,00,324/- dated 20.01.2024, Mobilization Bank Guarantee No. 0151824BG0000057 for ₹3,50,46,351/- dated 04.03.2024 and Performance Bank Guarantee No. 0151824BG0000016 for ₹1,89,00,019/- dated 20.01.2024, the encashment thereof is stayed.

58. Further, in view of the foregoing discussion, Prayer Clause ‘b’ pertaining to the interdiction of the Termination Notice cannot be granted, the Contract being determinable in nature.

59. Needless to state, nothing contained in this Judgement shall be construed as an expression of opinion by this Court on the merits of the controversy as between the parties. The observations made herein are confined solely to the determination of the present Petition and shall not prejudice the rights of either party in the arbitral proceedings or any other appropriate forum. All rights and contentions of the parties are expressly kept open and reserved.

60. At this stage, the Registry is directed to take on record and incorporate into the case file all the documents handed over by the parties during the course of the hearing.

61. Accordingly, the present Petition, along with pending application(s), is disposed of in the aforesaid terms.

62. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 24, 2026/rk/sg