



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 74 OF 2026

BETWEEN:

1. M/S. M.V. CONSTRUCTIONS
#16, 4TH CROSS, LAKSHMIPURA LAYOUT
DEVASANDRA, K.R. PURAM
BENGALURU - 560 036
A REGD. PARTNERSHIP FIRM
REP. BY ITS AUTHORIZED SIGNATORY
SRI CHERUKERU RAMBABU

...APPELLANT

(BY SRI BAPAT SAMPATH VINAYAKA RAO., ADVOCATE)

AND:

1. THE GENERAL MANAGER
SOUTH WESTERN RAILWAY
RAIL SADAN, GADAG ROAD
HUBLI - 20
2. THE CHIEF ADMINISTRATIVE OFFICER
(CONST) SOUTH WESTERN RAILWAY
18, MILLERS ROAD
BENGALURU - 46
3. THE CHIEF ENGINEER (CONST-III)
SOUTH WESTERN RAILWAY

Digitally
signed by
SRIDEVI S
Location:
High Court
of Karnataka



18, MILLERS ROAD
BENGALURU - 46

4. THE DEPUTY CHIEF ENGINEER CONSTRUCTION
SOUTH WESTERN RAILWAY
YADAVAGIRI
MYSURU - 570 020
5. KOTAK MAHINDAR BANK LTD.
KEMPEGOWDA ROAD BRANCH
K.G. ROAD
BENGALURU - 560 009

...RESPONDENTS

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURT ACT, 2015 R/W SECTION 3(1)(B) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE ORDER DATED 23.01.2026 PASSED BY HONBLE LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCCH-83) IN COMA.A. NO.284/2025 & ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(b) of the Arbitration and Reconciliation Act, 1996 [**A&C Act**], impugning the order dated 23.01.2026 [**impugned order**], passed



by the learned LXXXII Addl. City Civil and Sessions Judge, Bengaluru [Commercial Court] in Com. A.A.No.284/2025, captioned '*M/s. M.V. Constructions v. The General Manager, Southern Western Railway and others*'. The appellant had filed the said petition under Section 9 of the A&C Act, *inter alia*, praying that the invocation of the bank guarantee [**BG**] bearing No.80501GP251088363 for a sum of Rs. 47,68,800/-, be interdicted, till final disposal of the above case.

2. A plain reading of the impugned order indicates that the learned Commercial Court found no grounds to restrain the respondent Nos.1 to 4 [**the Railways**] from invoking the BG. Accordingly, the petition filed by the appellant was dismissed by the impugned order.

3. The facts of the case are that, the respondent No.2 - The Chief Administrative Officer, South Western Railway had issued a notice dated 28.08.2023 inviting tenders for "construction of earth retaining wall on Mysore end approach of the ROB in lieu of LC-89 at Km.99/500-600 between Mavinkere and Hassan Section" as part of rehabilitation work. The appellant had submitted its bid for executing the said works. The Railways accepted the said bid and issued a Letter of Acceptance



[**LOA**] dated 27.09.2023. The initial value of the work was fixed at Rs.9,53,74,654.78 (Rupees Nine Crores Fifty Three Lakhs Seventy-Four Thousand Six Hundred Fifty-Four and Paise Seventy-Eight Only). The works were required to be completed within a period of four months.

4. In terms of the LOA, the appellant was required to submit a performance guarantee for a sum of Rs.47,68,732.74 (Rupees Forty Seven Lakhs Sixty Eight Thousand Seven Hundred and Thirty Two and paise Seventy Four Only). In compliance with the aforesaid terms, the appellant submitted the BG, which was issued by respondent No.5 [**the bank**] in favour of the Railways, on 28.04.2025.

5. The appellant contends that the Railways failed to issue the drawings in time, which was one of the reasons for the delay in executing the project. The appellant further claims that during the course of execution of the works, the entire design of the structures was changed, and the variation statement was finalised on 11.01.2024. The delay as well as the change in the scope of work resulted in an increase in costs.



6. The averments made in the present appeal indicate that the Railways issued several notices regarding the slow progress of work, and further also complained regarding insufficient mobilisation of the workforce by the appellant. The appellant also responded to some of the said notices explaining the reasons for slow progress.

7. It is contended on behalf of the appellant that the Railways had made a substantial change in the scope of the work, whereby the quantity of work to be executed increased substantially. The appellant also contends that the increase in the scope of work could not be executed at the quoted rates due to a substantial cost escalation. By letter dated 16.04.2025 – which was sent by the appellant in response to the Seven Day Notice dated 12.04.2025 issued by the Railways advising the petitioner to improve the progress of the work – the appellant informed the Railways that due to the change in the design of work, it was not feasible to execute the remaining works at the rates as quoted and requested that the contract be foreclosed.

8. The Railways responded by a letter dated 06.05.2025 rejecting the appellant's request for foreclosure of the contract as it was after



a lapse of 16 months from the date on which the approved drawings were provided. At that stage, the Railways stated that 65% of the work was complete and advised the appellant to complete the remaining work. The appellant contested the said communication by a letter dated 07.05.2025. The appellant claimed that the financial progress of the works had exceeded 100%, and once again requested that the Railways foreclose the contract. The Railways rejected the said request by a letter dated 13.05.2025.

9. Thereafter, on 17.06.2025, the Railways issued a seven days notice threatening action under clause 62 of the General Conditions of the Contract [**GCC**] for failure to complete the works. The Railways issued another letter dated 19.06.2025, once again advising the appellant to mobilise men and machinery to complete the work. This was followed by another letter dated 25.06.2025, directing the appellant to undertake the remaining works. The appellant responded to the said letters, *inter alia*, claiming that executing further works would entail huge loss and reiterating his request for foreclosure of the agreement without any further liability.



10. The Railways issued a termination notice dated 28.06.2025 under clause 62 of the GCC. Thereafter on 30.06.2025, the appellant filed a petition under Section 9 of the A&C Act - Com.A.A.No.284/2025, which was dismissed by an impugned order dated 23.01.2026.

11. The learned counsel for the appellant contended that the appellant was not obliged to carry on any further works as he had already executed the works of the value as quoted. He contended that since the increase in the scope and specifications of the works was substantial, the appellant had no obligation to execute the works at the rates determined by the Railways.

12. He also cited clause 41 of the GCC, which requires that any modification to the contract be in writing.

13. We have heard the learned counsel for the appellant at length. It is immediately evident from the facts outlined above that there is a dispute between the parties concerning the performance of the agreement. Admittedly, the works have not been completed. The appellant asserts that the delay in executing the works was



attributable to the Railways. The Railways have issued letters claiming that progress in executing the works has been slow. We also note that GCC includes provisions allowing the Engineer to modify the scope of works. Nevertheless, it is not necessary to examine this controversy further. It is sufficient to observe that a dispute exists between the parties concerning the performance of the agreement in question.

14. It is a trite law that invocation of bank guarantees cannot be interdicted on account of contractual disputes. The Supreme Court has authoritatively held that BG can be interdicted only in cases where the invocation is not in terms of the bank guarantee or in exceptional cases of egregious fraud and special equities.

15. In ***U.P. Cooperative Federation Limited v. Singh Consultants and Engineers Pvt. Ltd.***: (1988) 1 SCC 174, Sabyasachi Mukharji J, had observed as under:—

“17. This question was again considered by the Queen's Bench Division by Mr. Justice Kerr in *R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.* [(1977) 2 All ER 862] In this case injunction was sought on a question



in respect of performance bond. The learned Single Judge Kerr, J. gave the following views:

“(i) Only in exceptional cases would the courts interfere with the machinery of irrevocable obligations assumed by banks. In the case of a confirmed performance guarantee, just as in the case of a confirmed letter of credit, the bank was only concerned to ensure that the terms of its mandate and confirmation had been complied with and was in no way concerned with any contractual disputes which might have arisen between the buyers and sellers. Accordingly, since demands for payment had been made by the buyers under the guarantees and the plaintiffs had not established that the demands were fraudulent or other special circumstances, there were no grounds for continuing the injunctions....

(ii) If it was right to discharge the injunctions against the bank, the fact that the Egyptian defendants had taken no part in the proceedings could not be a good ground for maintaining those injunctions. Further, equally strong considerations applied in favour of the discharge of the injunctions against the Egyptian defendants, and their failure to participate in the proceedings did not preclude the court from discharging the injunctions against them.”

18. In my opinion the aforesaid represents the correct state of the law. The court dealt with three different types of cases which need not be dilated here.

*** ** *

34. On the basis of these principles I reiterate that commitments of banks must be honoured free from interference by the courts. Otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases that is to say in case of fraud or in case of irretrievable injustice be done, the court should interfere”.



16. We may also refer to the following passage in the concurring opinion of K. Jagannatha Shetty J., in UP Co-operative Federation Limited (supra).

“53. Whether it is a traditional letter of credit or a new device like performance bond or performance guarantee, the obligation of banks appears to be the same. If the documentary credits are irrevocable and independent, the banks must pay when demand is made. Since the bank pledges its own credit involving its reputation, it has no defence except in the case of fraud. The bank's obligations of course should not be extended to protect the unscrupulous seller, that is, the seller who is responsible for the fraud. But, the banker must be sure of his ground before declining to pay. The nature of the fraud that the courts talk about is fraud of an “egregious nature as to vitiate the entire underlying transaction”. It is fraud of the beneficiary, not the fraud of somebody else. If the bank detects with a minimal investigation the fraudulent action of the seller, the payment could be refused. The bank cannot be compelled to honour the credit in such cases. But it may be very difficult for the bank to take a decision on the alleged fraudulent action. In such cases, it would be proper for the bank to ask the buyer to approach the court for an injunction.”

17. In ***Svenska Handelsbanken v. M/s. Indian Charge Chrome*** : (1994) 1 SCC 502, the Supreme Court explained as under:

“... in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud



and irretrievable injustice involved in the case and fraud has to be an established fraud....

... irretrievable injustice which was made the basis for grant of injunction really was on the ground that the guarantee was not encashable on its terms....

... 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.”

18. In a later decision in the case of ***Larsen & Tourbo Ltd. v. Maharashtra State Electricity Board : (1995) 6 SCC 68***, the Supreme Court reiterated the law regarding interdiction of bank guarantees. It is relevant to refer to the following extracts from the said decision.

“5. Before we adjudicate the rival pleas urged before us by counsel for the parties, it will be useful to bear in mind the salient principles to be borne in mind by the court in the matter of grant of injunction against the enforcement of a bank guarantee/irrevocable letter of credit. After survey of the earlier decisions of this Court in *United Commercial Bank v. Bank of India* [(1981) 2 SCC 766], *U.P. Coop. Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.* [(1988) 1 SCC 174], *General Electric Technical Services Co. Inc. v. Punj Sons (P) Ltd.* [(1991) 4 SCC 230] and the decision of the Court of Appeal in England in *Eliau and Rabbath v. Matsas and Matsas* [(1966) 2 Lloyd's Rep 495, CA] and a few American decisions, this Court in *Svenska Handelsbanken v. Indian Charge Chrome* [(1994) 1 SCC 502], laid down the law thus : (SCC pp. 523-27, paras 60-72)



“... in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud and irretrievable injustice involved in the case and fraud has to be an established fraud....

... irretrievable injustice which was made the basis for grant of injunction really was on the ground that the guarantee was not encashable on its terms....

... 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.”

19. In ***Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company: (2007) 8 SCC 110***, the Supreme Court referred to the earlier decisions and summarized the principles regarding interdiction of a bank guarantee as under:

“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 realize 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 realization 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.”

20. It is also instructive to refer to the decision of the Supreme Court in ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P). Ltd. : AIR 1997 SC 2477***. The Court had referred to earlier decisions and held as under.

“21. Numerous decisions of this Court rendered over a span of nearly two decades have laid down and reiterated the principles which the courts must apply while considering the question whether to grant an injunction which has the effect of restraining the encashment of a bank guarantee. We do not think it necessary to burden this judgment by referring to all of them. Some of the more recent pronouncements on



this point where the earlier decisions have been considered and reiterated are *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] and *U.P. State Sugar Corpn. v. Sumac International Ltd.* [(1997) 1 SCC 568] The general principle which has been laid down by this Court has been summarised in the case of *U.P. State Sugar Corpn.* [(1997) 1 SCC 568] as follows : (SCC p. 574, para 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.”

21. The learned Commercial Court had rightly referred to the decision of the Supreme Court in ***UP State Sugar Corporation v. Sumac International Ltd.: 1997 (1) SCC 568***. In this decision, the Court had, in unambiguous terms, explained that the existence of any dispute between the parties would not be a ground to issue a notice restraining the enforcement of bank guarantees. It would be relevant to refer to the following passage from the said decision.

“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..”

22. In the present case, there is no allegation of egregious fraud by the respondent. The respondent has sought to invoke the BG alleging breach of the contract in question. Although the appellant



stoutly disputes that it has breached the contract, the enforcement of the BG cannot be injuncted.

23. As noted above, it is well settled that the BGs cannot be interdicted on the ground that the liability to pay the amount is disputed.

24. In view of the above, we find no infirmity with the decision of the learned Commercial Court in rejecting the petitioner's prayer for staying the invocation / enforcement of the BG.

25. The appeal is, accordingly, dismissed.

26. The pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

SD
List No.: 2 Sl No.: 10