



CNR: KAHC010315982022

NC: 2026:KHC:50365
WP No. 13943 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.13943 OF 2022 (GM-RES)

BETWEEN:

M/S.GITA REFRACTORIES PVT LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT NO.105
'R.R.TAKT', 37 BHOOPASANDRA MAIN ROAD
SANJAYNAGAR, BENGALURU - 560094
REPRESENTED BY HEREIN BY ITS
VICE PRESIDENT
MR.NARAYANDAS R JAJU

...PETITIONER

(BY SRI. PRATIK PANY, ADVOCATE AND
SMT.SHARADA REDDY, ADVOCATE)

AND:

1. STATE BANK OF INDIA
BANGALORE CITY BRANCH
NO.22, POST BOX NO.6511
J C ROAD, BENGALURU -560002
IFSC SBIN000814
REPRESENTED BY ITS CHIEF MANAGER
2. KALYANI STEELS LTD
HOSPET ROAD
GINIGEA TALUK

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KOPPAL-583228
REPRESENTED BY ITS MANAGING DIRECTOR
UNDER REGISTERED COMPANIES ACT, 1956

...RESPONDENTS

(BY SRI.M.R.SHANTHA KUMARI, ADVOCATE FOR R.1;
R.2 - SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO READ DOWN THE ADVANCE BANK GUARANTEE (ANENURE-D) IN TERMS OF THE ARBITRARY EXTENSION OF CLAIM PERIOD BEYOND THE CONTRACTUALLY AGREED TIME PROVIDED FOR IN THE APPLICATION AND THE PURCHASE ORDER AND ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed by the petitioner, an MSME engaged in the manufacture of refractory materials, seeking to read down the Advance Bank Guarantee at Annexure-D, insofar as respondent No.1-Bank has provided a claim period extending beyond the period contractually agreed between the petitioner and respondent No.2.

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2. Respondent No.1 is the State Bank of India, a public sector Bank, and respondent No.2 is an integrated steel complex. Respondent No.2 issued a Purchase Order dated 08.03.2021 in favour of the petitioner for purchase of General Purpose Medium Heat Bricks for a total consideration of Rs.3,83,33,287.50/-. As a condition precedent under the Purchase Order, respondent No.2 agreed to pay an advance equivalent to 10% of the total consideration against an Advance Bank Guarantee for an equivalent amount. The Purchase Order stipulated that the validity of the Advance Bank Guarantee would be upto completion of deliveries plus four weeks.

3. In order to furnish the Advance Bank Guarantee, the petitioner addressed a letter dated 17.03.2021 to respondent No.1 requesting issuance of an Inland Bank Guarantee, which is produced at Annexure-C. Pursuant thereto, respondent No.1 issued a Deed of Guarantee

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dated 22.03.2021 in favour of respondent No.2 for a sum of Rs.32,48,584/-.

4. According to the petitioner, in terms of the Purchase Order, the validity of the Advance Bank Guarantee was upto 21.04.2022. However, respondent No.1, relying upon certain endorsements/communications issued by the Ministry of Finance dated 23.04.2019 and 21.05.2019, provided a further period of one year for making a claim under the guarantee, thereby extending the claim period upto 21.04.2023.

5. The grievance of the petitioner is that neither the petitioner nor respondent No.2 had sought or agreed for such an extended claim period. It is contended that the additional claim period was incorporated by respondent No.1 unilaterally and that the same travels beyond the terms and conditions pursuant to which the petitioner had applied for issuance of the Advance Bank Guarantee.

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6. The petitioner, accordingly, addressed a letter dated 13.05.2022 to respondent No.1, specifically contending that no additional period for making a claim had been sought or required by either party, either at the time of issuance of the guarantee or at any subsequent point of time.

7. When the matter stood thus, a dispute arose between the petitioner and respondent No.2. The petitioner contends that respondent No.2 is now threatening to invoke the bank guarantee. It is the specific contention of the petitioner that the substantive dispute between the parties is governed by the arbitration clause contained in the contractual arrangement. However, the petitioner is aggrieved by the action of respondent No.1 in unilaterally extending the claim period, since such extension has resulted in the petitioner being required to pay additional commission/charges to the Bank and also to maintain collateral security for the extended period.

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8. The principal contention urged by the petitioner is that respondent No.1 could not, on its own, enlarge the period during which a claim could be made under the Advance Bank Guarantee beyond what was stipulated in the application and the Purchase Order. Reliance is placed upon the judgment of the High Court of Delhi in W.P.(C) No.7677/2019.

9. *Per-contra*, learned counsel appearing for respondent No.1-Bank has filed statement of objections and opposed the petition. It is contended that the extended claim period stipulated in the guarantee is in conformity with Section 28 of the Indian Contract Act, 1872, as amended by the Banking Laws (Amendment) Act, 2012. Reliance is particularly placed upon Exception 3 to Section 28, which reads as under:

"Exception 3 - Saving of a guarantee agreement of a bank or financial institution: This section shall not render illegal a contract in writing by which any bank or financial institution stipulates a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the

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rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability."

10. Learned counsel for respondent No.1 further places reliance upon an e-circular dated 01.02.2019, which, according to the Bank, stipulates that the expiry of any bank guarantee must provide for a minimum period of one year from the date of expiry of the validity period.

11. In the light of the rival contentions, the following point arises for consideration:

"Whether respondent No.1-Bank was justified in unilaterally stipulating a claim period of one year beyond the contractually agreed validity period of the Advance Bank Guarantee, on the premise that such stipulation was mandated by Exception 3 to Section 28 of the Indian Contract Act, 1872 and the applicable banking circulars?"

12. The answer to the aforesaid point requires consideration of the scope and effect of Exception 3 to Section 28 of the Contract Act.

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13. The issue is no longer *res integra*. The High Court of Delhi, while considering an identical issue in W.P.(C) No.7677/2019, has examined the distinction between the validity period of a bank guarantee and the claim period stipulated therein. The relevant observations of the Delhi High Court, which have considerable bearing on the controversy involved in the present petition, are extracted hereunder:

"48. It is clear that respondent No. 1 is erroneously of the view that they are in law mandated to stipulate a claim period of 12 months in the bank guarantee failing which the clause shall be void under Section 28 of the Contract Act. A perusal of para 15 of the writ petition shows that a claim period has been explained as a time period contractually agreed between the creditor and the principal debtor which provides a grace period beyond the validity period of the guarantee to make a demand on the bank for a default which has occurred during the validity period. Respondent No. 1 does not deny the above averments of the petitioner in the counter-affidavit. As noted above, Section 28 of the Contract Act does not deal with the said claim period. It deals with right of the creditor to enforce his rights under the bank guarantee in case of refusal by the guarantor to pay before an appropriate court or tribunal.

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49. In view of the above communications dated 18.08.2018 and 28.03.2019 as issued by respondent No. 1 and the circulars dated 10.02.2017 and 05.12.2018 to the extent that they reproduce erroneous interpretation of Exception 3 to Section 28 of the Contract Act are clearly vitiated. It is ordered accordingly."

14. The aforesaid exposition makes the legal position clear. Exception 3 to Section 28 enables a bank or financial institution to stipulate, in a guarantee agreement, a specified period for extinguishment of rights or discharge of liability, subject to the statutory requirements. However, the said provision cannot be construed as imposing a mandatory requirement upon the Bank to prescribe a minimum one-year claim period in every bank guarantee.

15. The distinction between the validity period and the claim period is significant. The validity period determines the period during which the guarantee remains operative and within which the underlying default must occur in terms of the guarantee. The claim period, on the

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other hand, concerns the period within which the beneficiary may make a demand upon the Bank in respect of a liability/default arising during the validity of the guarantee.

16. In the present case, the petitioner had applied for issuance of the Advance Bank Guarantee in terms of the Purchase Order. The Purchase Order itself stipulated the period for which the guarantee was required, namely, completion of deliveries plus four weeks. The petitioner specifically contends that neither the Purchase Order nor the application submitted to respondent No.1 contemplated an additional one-year claim period.

17. Respondent No.1, being the guarantor, cannot enlarge the contractual obligations of the petitioner unilaterally by relying upon a provision which does not mandate such enlargement. More so, when such enlargement entails additional commission and continuation of collateral security by the petitioner, the

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same cannot be sustained merely on the ground that the Bank understood the statutory provision or the banking circular to require a one-year claim period.

18. The e-circular relied upon by respondent No.1 cannot be construed independently of the statutory provision. An administrative or banking circular cannot create a mandatory obligation which does not flow from the statute itself. The circular has necessarily to be understood in a manner consistent with Section 28 and Exception 3 thereto.

19. This Court is conscious of the settled principle that Courts ordinarily exercise restraint in interfering with invocation of an unconditional bank guarantee. However, the present proceedings do not involve adjudication upon the entitlement of respondent No.2 to invoke the guarantee or upon the underlying contractual dispute between the parties. The limited question is whether respondent No.1 could unilaterally enlarge the claim period



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on an erroneous understanding that Exception 3 to Section 28 mandated such enlargement.

20. In view of the aforesaid discussion and the law laid down by the Delhi High Court in W.P.(C) No.7677/2019, this Court is of the considered view that respondent No.1 was not justified in unilaterally incorporating a one-year claim period beyond the period stipulated in the Purchase Order and the petitioner's request for issuance of the guarantee. Accordingly, the point for consideration is answered in the negative.

21. For the foregoing reasons, the following:

ORDER

(i) The writ petition is ***allowed***;

(ii) The stipulation made by respondent No.1 providing for a claim period upto 21.04.2023, beyond the contractually agreed validity period of the Advance Bank Guarantee, is set aside;

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(iii) Respondent No.1 shall give effect to the Advance Bank Guarantee in accordance with the terms and period for which the guarantee was sought and agreed to be issued;

(iv) It is made clear that this Court has not expressed any opinion on the merits of the dispute between the petitioner and respondent No.2, including the entitlement, if any, of respondent No.2 to invoke the Bank Guarantee in accordance with the underlying contract. All such rights and contentions are left open;

(v) Pending interlocutory applications, if any, stand disposed of.

No order as to costs.

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(SACHIN SHANKAR MAGADUM)
JUDGE