



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY

APPEAL FROM ORDER NO. 229 OF 2026

29TH JULY, 2026

M/s Manish Taxi Service & another Appellants

Versus

The Airports Authority of India Respondent

Counsel for the appellants : Mr. Jitendra Chaudhary, learned counsel

Counsel for the respondent : Mr. Digvijay Rai, Ms. Abhilasha Tomar and Mr. Y.S. Chaudhary, learned counsel

The Court made the following:

JUDGMENT: (per Sri Manoj Kumar Gupta, C.J.)

1) The present appeal is directed against the order of Commercial Court dated 23.05.2026, whereby the application filed by the appellants under Section 9 of the Arbitration and Conciliation Act, 1996 has been rejected. In the said application, the appellants had prayed for an order restraining the Airports Authority of India (AAI),



Dehradun from encashing the bank guarantees furnished by the appellants by way of security for execution of the contract between the appellants and AAI. During the pendency of the proceedings before the Commercial Court, the appellants by means of another application (paper No. 17C), sought an ad-interim injunction against AAI for restoring back the status of bank guarantee as on 02.05.2025 and, vide yet another application (paper No. 22C), the appellants prayed for staying the effect of a letter dated 15.05.2025, by which AAI intimated the appellants that it had adjusted the outstanding dues against the Security Deposit available with it as bank guarantee and after adjustment, the Security Deposit has got reduced. The appellants were accordingly required to recoup the same within fifteen days of issuance of the notice failing which the license would be terminated.

2) The facts of the case have been noted by the Commercial Court in paragraph Nos. 2, 3 and 4 of its order and, the same are as follows :

2(i). Brief facts of the case are that, earlier the present petition was filed by the petitioners before this Court on dated 02.05.2025 for restraining the respondent from encashing the Bank Guarantees as mentioned in the relief clause of the petition. On dated 28.05.2025, after hearing both the sides, the Application under Section 9 of the Act, was rejected by



this Court holding that the petition was premature and not maintainable without exhausting the remedy of mediation provided under the Agreement between the parties. The petitioners challenged the aforesaid order of this Court by filing A.O. No. 168 of 2025.

(ii). On dated 09.06.2025, Hon'ble High Court of Uttarakhand held that for the reason that the bank guarantees have already been invoked, the remedy, provided under Section 9 of the Act, cannot be rendered nugatory, allowed the Appeal and remitted the matter back to this Court for deciding the same on merits.

(iii). In compliance of the order passed by the Hon'ble High Court of Uttarakhand in the aforesaid appeal, the present matter has been heard on merit.

3(i). The contentions of the petitioner are that on 25.01.2023, the respondent issued an e-tender notice inviting request for proposal for Concession to Design, Fit out, finance, develop, market, operate, maintain and manage the Food and Beverage outlets at Dehradun Airport for a period of seven years. A total area 429.61 square meters was earmarked for the said purpose by the respondent. The petitioner firm was declared L-1, as it quoted highest price at the rate of Rs.51.70 per passenger.

(ii). On 24.05.2023, a letter of intent (LOI) was issued by the respondent in favour of the petitioner firm. The petitioners deposited the Bank Guarantee amount in three parts, (a) BG of Rs.1 crore issued by HDFC Bank Dehradun dated 03.07.2023 (b) BG of Rs. 6 crores issued by HDFC Bank Dehradun dated 09.10.2023 and (c) BG of Rs.46.68 lakhs issued by HDFC Bank Dehradun dated 07.11.2023.

(iii). Thereafter, on 07.11.2023, Concession Agreement was executed between the parties. It is stated by the petitioner that the respondent was obliged to hand-over the entire area measuring 429.61 square meters and only then,



liability to make payment would accrue, but the respondent delivered possession in phases starting from 29.11.2023 till September 2024. The respondent issued Show Cause Notices on various dates, however, it is contended by the petitioner that the demands made by the respondent were not genuine and the petitioner disputed the demands and did not make the payment to the respondent.

(iv). During pendency of the present petition, on dated 09.05.2025 the respondents encashed the Bank Guarantees and adjusted a sum of Rs.4,78,93,927/- (Rs.3,89,05,633 towards the principal amount and Rs.89,88,294/- as penal interest) against the outstanding dues and therefore, the security deposit (BG) got reduced to Rs.2,67,74,093/-.

(v). Thereafter, the respondent issued notice to the petitioner dated 15.05.2025 intimating the petitioners about the adjustment made towards the arrears of license fees from the security deposit and required the petitioners to recoup the security deposit in terms of the license agreement within fifteen days of issue of the notice, i.e. 30.05.2025, failing which necessary action to terminate the license would be initiated without any further reference to the petitioner.

(vi). In the above mentioned changed circumstances, the petitioner filed an application paper no. 17C seeking ad-interim injunction, against the respondent to restore back the status of bank guarantee as on 02.05.2025 and vide an application paper no. 22C the petitioner has prayed to stay the effect of the above mentioned letter dated 15.05.2025.

4(i). The respondent contended that the gestation period was 60 days from Access Date of each location (site) and not 60 days from the date of issuance of LOI. The respondent raised bills on pro-rata basis from access date. The petitioners defaulted in payment of the bills. The present petition has become infructuous as the bank guarantees have already been invoked and Writ Petition (M/B) Nos. 381 and



383 of 2025 which were filed by the petitioner for seeking stay order against the termination of the contract and issuing fresh tenders, rejected by the Hon'ble High Court and the petitioner has not moved any amendment application, in the present petition for any additional prayer before this Court, despite the liberty granted to the petitioner by the Hon'ble High Court vide order dated 20.03.2026.

(ii). The operation of F&B locations at the Airport is being seriously impacted. The respondent issued a notice inviting tender for short-term license for operating a snack bar over a small area measuring 15 square meters on the first floor at Dehradun Airport on 1st May, 2025 subject to termination of the Master Concessionaire in favour of the petitioners. In the changed circumstances, the relief sought by the petitioner cannot be granted in the present petition under Section 9 of the Act. Ld. Counsel for the respondent has placed reliance upon the case law *M/s Inter Ads Exhibition Pvt. Ltd. Vs Busworld Internation Cooperatieve Vennootschap Met Beperkte Anassprakelijkheid, O.M.P(I) (Comm.) 273/2019* and submitted that the said contract has already terminated by the respondent. The dispute is capable of arbitration, the disputes can only be adjudicated in the arbitration proceedings.”

3) The Commercial Court has held that an injunction order for restraining a party from encashing bank guarantee can only be passed in a case where any fraud is established and, since in the present matter, there is no such case, therefore, no such injunction can be granted. For arriving at the said conclusion, the Commercial Court has placed reliance on the judgment of the Supreme Court in case of ***U.P. State Sugar***

***Corporation Vs M/s Sumac International Ltd., 1997 (1)***

SCC 568. The relevant observations wherein are as follows :

“....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 co-exist in some cases. In the case of *U.P. Cooperative Federation Ltd. v. Singh Consultants and*



Engineers (P) Ltd. (988 [1] SCC 174), which was the case of 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 NA* (1984 [1] AER 351 at 352): "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.

The same question came up for consideration before this Court in *Svenska Handelsbanken v. M/s Indian Charge Chrome & Ors.* (1994 [1] SCC 502). The Court once again reiterated that a confirmed bank guarantee/irrevocable letter of credit cannot be interfered with unless there is established fraud or irretrievable injustice involved in the case. Irretrievable injury has to be of the nature noticed in the case of *Itek Corporation v. The First National Bank of Boston etc.* (566 Fed Supp. 1210). On the question of fraud this Court confirmed the observations made in the case of *U.P. Cooperative Federation Ltd.* (supra) and stated that the fraud must be that of the beneficiary, and not the fraud of anyone else.

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....”

4) As regard the second prayer made by the appellants through application 22C it has been observed that the AAI in pursuance of notice dated 15.05.2025 had already terminated the agreement. The appellants were granted liberty by this Court by order dated 20.03.2026 in Writ Petition (M/B) Nos. 381 and 383 of 2025 to amend the reliefs in their applications pending before the Commercial Court under Section 9 of the Act. However, the appellants have failed to claim any relief in light of the



subsequent development, namely the termination of the license agreement. The Commercial Court has, therefore, held that the appellants have failed to establish any *prima facie* case in their favour, nor balance of convenience lies with them. It has also been observed that the present case is not a case where even if any loss or injury is suffered the same cannot be compensated in terms of money. Accordingly, the application has been rejected.

5) Mr. Jitendra Chaudhary, learned counsel for the appellants submits that an order restraining a party to invoke the bank guarantee can also be passed if a case of irretrievable injustice or injury is made out and the court below has not considered the said aspect of the matter. In support of the said submission he also places reliance on the same judgment of the Supreme Court in case of ***M/s Sumac International Ltd.*** (supra). He further submits that the object of granting injunction under Section 9 of the Arbitration and Conciliation Act, 1996 is to preserve the *lis*. It is submitted that if injunction is not granted, the *lis* would be destroyed. He accordingly submits that the court below has erred in rejecting the application under Section 9 of the Act.



6) On the other hand, learned counsel for AAI, has supported the order passed by the Commercial Court and has further submitted that the license agreement was terminated on 31.05.2025 as the appellants had failed to comply with the conditions of the agreement and recoup the security deposit. He further submits that since after issuance of notice dated 15.05.2025 the agreement itself was terminated, therefore, Section 9 application itself was rendered infructuous.

7) The Supreme Court in ***M/s Sumac International Ltd.*** (supra) has held that an order restraining a party from invoking bank guarantee should not be passed in a casual manner. Only two exceptions have been carved out. The first being in case of fraud and, the other one, where any irretrievable injustice would be caused.

8. In the present case, the main dispute between the parties was whether AAI was entitled to realize license fees from the 'access date' of each location or from 60 days from the date of issuance of LOI. The further dispute was whether the AAI was justified in raising demands on *pro-rata* basis in respect of the area of which possession was delivered to the appellants. Various other ancillary questions are also involved. The Commercial



Court has rightly observed that these issues are still to be examined by the Arbitral Tribunal.

9) On query made from learned counsel for the appellants, it is admitted that till date the appellants have not taken any steps to even get the dispute referred to the arbitral tribunal.

10) The alleged injury, as rightly observed by the Commercial Court, is capable of being computed in terms of money and, it is not a case where any irretrievable injury would be caused. The court below has rightly observed that no case is made out in favour of the appellants to grant any injunction.

11) The notice dated 15.05.2025 in respect of which application 17C was filed has also exhausted itself as thereafter the contract has already been terminated. We are also of the considered opinion that the present case is not one of such case where any injunction against the invocation of bank guarantee, or upon its invocation, for its restitution, should be granted to the appellants.

12) The appellants are still free to approach the Arbitral Tribunal to get the dispute between the parties resolved.



2026:UHC:6546-DB

13) Accordingly, we find no good ground to interfere with the order of the Commercial Court. The appeal lacks merit and is, accordingly, dismissed.

14) Pending application(s), if any, also stand disposed of.

MANOJ KUMAR GUPTA, C.J.

SUBHASH UPADHYAY, J.

Dt: 29TH JULY, 2026
Negi

HIMANSHU NEGI
Digitally signed by HIMANSHU NEGI
DN: c=IN, o=HIGH COURT OF
UTTARAKHAND, ou=HIGH COURT OF
UTTARAKHAND,
2.5.4.20=ba3b60774012c1e41d4e20413aa1f1
16e73351da6f878326386908a796d5757,
postalCode=263001, st=UTTARAKHAND,
serialNumber=738D9AD0F87FA80990FC31A
722A68C552D470E84FD2F88D0F7C180B2A
1524A4D, cn=HIMANSHU NEGI
Date: 2026.07.30 11:53:37 +05'30'