

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.M.P. No. 1142 of 2015**

M/s. Jagannath Industries. A Partnership Firm duly Registered under the relevant provisions of the Indian Partnership Act, 1932, Station Road, Halvad, Gujarat, Through : its Partner Jignashu M Panchali, S/o. Shri Babu Bhai Panchali, Aged About 48 Years, R/o. Halvad, Gujarat

**---- Petitioner**

**Versus**

1. State Economic Offences Investigation Bureau Raipur, Through : In-Charge Of Police Station, State Economic Offences Investigation Bureau, Raipur, Chhattisgarh.
2. Shivshakar Bhatt, S/o. Ram Manohar Bhatt, Occupation Manager, NAN, Head Office P D.S/ Claim, R/o HIG-I/138, Sector-1, D.D. Nagar, Police Station And Post D.D. Nagar, Civil And Rev. Distt. Raipur Chhattisgarh.
3. Tikam Das Harchandani, S/o. N.M. Harchandani, R/o. New 42/446 Bairagarh, Bhopal and H. No. 118 Mahalaxmi Enclave Colony, Sihava Road, Dhamtari-03, District Dhamtari, Chhattisgarh.
4. Chheer Sagar Patel, S/o. Laxminarayan Patel, R/o. House No.19, Kalindi Kunj, Meethuguda, Raigarh, Police Station And Post Raigarh, Civil And Rev. Distt. Raigarh, Chhattisgarh.
5. Satish Kumar Kaiwartya, S/o. D. Mayaram Kaiwartya, R/o. New Shanti Nagar, Near Durga Mandir, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur, Chhattisgarh.
6. Kushal Kishor Yadu, S/o. M.L. Yadu, R/o. Dahma Sadan, Behind Shanti Niketan School, Dayalband, Punjabi Colony, Bilaspur, Police Station And Post Bilaspur, Civil And Rev. Distt. Bilaspur, Chhattisgarh.
7. Sandeep Agrawal, S/o Murarilal Agrawal Dhamaniya, R/o House No. 15, Phase-1, Harsh Vihar Colony, Daldal Sivni, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur Chhattisgarh.
8. Dilip Kumar Sharma, S/o Shivdayal Sharma, R/o Raj Bhandar Grih Nirman Parisar, Ganj Para, Balod, Police Station And Post Balod, Civil And Rev. Distt. Balod, Chhattisgarh.
9. Ravindranath Singh, S/o Jagannath Singh, R/o. North Ring Road, Shikari Road, Boripara, R.N. Gali, Ambikapur, Police Station And Post Ambikapur, Civil And Rev. Distt. Surguja, Chhattisgarh.
10. Devendra Kushwaha, S/o Prahlad Singh Kushwaha, R/o House No. 109, Sundar Nagar, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur, Chhattisgarh.

11. Ramphool Pathak, S/o Durga Prasad Pathak, R/o House No. 659, Near Kargil Chowk, Sundar Nagar, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur, Chhattisgarh.
12. Ashok Soni, S/o Ramchandra Soni, R/o MIG-II/428 Sector-02, D.D. Nagar, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur, Chhattisgarh.
13. Sudhir Kumar Bhoshle, S/o Prakash Bhoshle, R/o Kalapatha, Vikas Nagar, Baitul (M.P.) At Present R/o. Senior MIG-316 Vijeta Complex, New Rajendra Nagar, Raipur, Police Station And Post Raipur, Civil And Rev. Distt. Raipur, Chhattisgarh.
14. Motilal Sahu, S/o Manbodh Sahu, R/o Pattakothi Godam, Gariyaband, District Manager, Gariyaband Nagrik Aapurti Nigam, Gariyaband, Police Station And Post Gariyaband, Civil And Rev. District Gariyaband, Chhattisgarh.
15. J.P. Dwivedi, S/o Agun Prasad Dwivedi, R/o Ganga Nagar Sector-2, Behind Office Of Van Vikas Nigam, Mangla Road, Bilaspur, Police Station And Post Bilaspur, Civil And Rev. District Bilaspur, Chhattisgarh.
16. Dhaneshwar Ram, S/o Khaira Ram, R/o Through B.R. Sinha, Ram Nagar, Kabirdham, Police Station And Post Kabirdham, Civil And Rev. District Kabirdham, Chhattisgarh.
17. Munish Kumar Shah, S/o Omprakash Shah, R/o. Mahesh Colony, In Front Of Mahesh Bhawan, Shrinagar, Gudhiyari, Raipur, Police Station And Post Raipur, Civil And Rev. District Raipur, Chhattisgarh.
18. Chhattisgarh State Civil Supplies Corporation, Through : M.N. Prasad Rao, General Manager, Chhattisgarh State Civil Supplies Corporation Limited, Hitvad Press Premises, Avanti Vihar, Raipur, District Raipur, Chhattisgarh.

---- Respondents

AND

**CR.M.P. No. 1164 of 2015**

Ramesh Labh Shankar Shukla, S/o Labh Shankar Shukla, Aged About 58 Years, Proprietor Of M/s Ramesh Salt Traders Station Road, Halvad Gujarat, R/o Halvad Gujarat.

---- Petitioner

**Versus**

1. State Economic Offences Investigation Bureau, Raipur, Through : In-Charge Of Police Station, State Economic Offences Investigation Bureau, Raipur, Chhattisgarh

2. Shivshankar Bhatt, S/o Ram Manohar Bhatt, Occupation Manager NAN, Head Office PD.S / Claim, R/o HIG -I/138, Sector -1, D.D. Nagar, Police Station & Post D. D. Nagar, Civil & Revenue District Raipur, Chhattisgarh
3. Tikam Das Harchandani, S/o N.M. Harchandani, R/o New 42/446 Bairagarh, Bhopal & H No.118, Mahalaxmi Enclave Colony, Sihava Road, Dhamtari-03, District Dhamtari, Chhattisgarh
4. Chheer Sagar Patel, S/o Laxminarayan Patel, R/o House No.19, Kalindi Kunj, Meethuguda, Raigarh, Police Station & Post Raigarh, Civil & Revenue District Raigarh, Chhattisgarh
5. Satish Kumar Kaiwartya, S/o D.Mayaram Kaiwartya, R/o New Shanti Nagar, Near Durga Mandir, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
6. Kushal Kishor Yadu, S/o M. L. Yadu, R/o Dahma Sadan, Behind Shanti Niketan School, Dayalband, Punjabi Colony, Bilaspur, Police Station & Post Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh
7. Sandeep Agrawal, S/o Murarilal Agrawal Dhamaniya, R/o House No. 15, Phase-1, Harsh Vihar Colony, Daldal Sivni, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
8. Dilip Kumar Sharma, S/o Shivdayal Sharma, R/o Raj Bhandar Grih Nirman Parisar, Ganj Para, Balod, Police Station & Post Balod, Civil & Revenue District Balod, Chhattisgarh
9. Ravindranath Singh, S/o Jagannath Singh, R/o North Ring Road, Shikari Road, Boripara, R.N. Gali, Ambikapur, Police Station & Post Ambikapur, Civil & Revenue District Surguja, Chhattisgarh
10. Devendra Kushwaha, S/o Prahlad Singh Kushwaha, R/o House No. 109, Sundar Nagar Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
11. Ramphool Pathak, S/o Durga Prasad Pathak, R/o House No. 659, Near Kargil Chowk, Sundar Nagar, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
12. Ashok Soni, S/o Ramchandra Soni, R/o MIG-II/428, Sector -02, D.D. Nagar, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
13. Sudhir Kumar Bhoshle, S/o Prakash Bhoshle, R/o Kalapatha, Vikas Nagar, Baitul M.P., At Present R/o Senior MIG-316 Vijeta Complex, New Rajendra Nagar, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
14. Motilal Sahu, S/o Manbodh Sahu, R/o Pattakothi Godam, Gariyaband, District Manager, Gariyaband Nagrik Aapurti Nigam, Gariyaband, Police Station & Post Gariyaband, Civil & Revenue District Gariyaband, Chhattisgarh

15. J.P. Dwivedi, S/o Agun Prasad Dwivedi, R/o Ganga Nagar, Sector-02, Behind Office Of Van Vikas Nigam, Mangla Road, Bilaspur, Police Station & Post Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh
16. Dhaneshwar Ram, S/o Khaira Ram, R/o Through B.R. Sinha, Ram Nagar, Kabirdham, Police Station & Post Kabirdham, Civil & Revenue District Kabirdham, Chhattisgarh
17. Munish Kumar Shah, S/o Omprakash Shah, R/o Mahesh Colony, In Front Of Mahesh Bhawan, Shrinagar, Gudhiyari, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh
18. Chhattisgarh State Civil Supplies Corporation, Through : M.N. Prasad Rao, General Manager, Chhattisgarh State Civil Supplies Corporation Limited, Hitvad Press Premises, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- Respondents

---

|                                                        |   |                                    |
|--------------------------------------------------------|---|------------------------------------|
| For Petitioner                                         | : | Mr. Manoj Paranjpe, Advocate       |
| For Respondent/ State                                  | : | Mr. Anil S. Pandey, Govt. Advocate |
| For Respondent/ C.G. State Civil Supplies Corporation. | : | Mr. V.R.Tiwari, Advocate           |

---

**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**23/12/2015**

1. Both the cases are being tried and decided together as they are arising out of the same cause of action and similar nature of facts are involved.
2. Challenge is to the order dated 30.11.2015 whereby the Court of Special Judge (Prevention of Corruption Act), Raipur, has directed the Bank Guarantee to be extended which was given in favour of the State Civil Supplies Corporation for a period of one year as the Bank Guarantee would expire on 31.12.2015.
3. Learned counsel for the petitioner submits that the petitioner firm entered into a contract for supply of iodized salt with the State Civil Supplies Corporation and consequent to the contract, a Bank Guarantee was also furnished by the petitioner for due performance of

the contract. Subsequently, a report was made by the State Government and its Agencies that the sub-standard salt were supplied. The contract were executed on 03.12.2014 and 07.01.2015 thereafter 90% of the goods were supplied and distributed. He would submit that after the goods were supplied, it was alleged that the goods are of sub-standard and the payment of the goods were withheld and the State Civil Supplies Corporation refused to pay the amount. The said refusal of payment was subject of challenge before the Division Bench of this Court in W.P.(C) No.1345/2015 and 1350/2015 wherein by an order dated 04.08.015, the Division Bench of this High Court observed that since the contract contained the arbitration clause, therefore, the dispute as a whole was directed to be referred to the Arbitrator. Consequently, the matter was referred to the Arbitrator and the dispute was raised before the Arbitrator. The Arbitrator by its order dated 26.10.2015 stayed the encashment of the Bank Guarantee, which was furnished as per terms of contract.

4. Learned counsel for the petitioner thereafter further submits that since the criminal case was also registered against the power of attorney holder of the company, therefore, an application was filed before the criminal Court to get back the Bank Guarantee as the same was seized by investigation agency. The State Civil Supplies Corporation prayed for custody of the Bank Guarantee by an application under Section 457 of Cr.P.C., however, the same was refused, but the trial Court by its order dated 30.11.2015 directed for extension of the Bank Guarantee for a further period of one year since the Bank Guarantee was expiring on 31.12.2015. He further submits that by this petition, the petitioner seeks and prays for stay of the order whereby the extension of the Bank Guarantee has been ordered for. The counsel

would further submit that against the refusal to handover the Bank Guarantee no remedy was availed and that order has reached its finality. Consequently, the extension of Bank Guarantee which is ordered cannot be done by the Court below in exercise of its power under Section 451 of Cr.P.C. It is contended that the order is without jurisdiction and needs to be arrested. He further submits that against the order of injunction to encash the Bank Guarantee dated 26.10.2015, no remedy was availed and extension could be done under Section 17 of the Arbitration & Conciliation Act as interim measure action could have been taken. Therefore, the simplicitor extension of the Bank Guarantee cannot be ordered for.

5. Per contra, learned counsel appearing on behalf of the State and State Civil Supplies Corporation vehemently opposes the same. Learned counsel for the State Civil Supplies Corporation would submit that the life of the Bank Guarantee was upto 31.12.2015. It is further submitted that encashment of the Bank Guarantee having been stayed by the Arbitrator and the Bank Guarantee which was a part of the seizure document in lieu of the criminal case becomes an important document which has to live its life and cannot be allowed to end automatically on 31.12.2015. He further submits that the Bank Guarantee so issued would be covered within the definition of perishable goods as it will have an implication of the goods. Consequently, after expiry on 31.12.2015 the Bank Guarantee, even if, it is being seized will become a scrape of paper. Therefore, the extension of Bank Guarantee in the facts of this case is not illegal and the Court was within its power to extend the same.
6. I have heard learned counsel appearing for the parties and perused the documents filed alongwith the petition.

7. During the course of argument, learned counsel for the respondent State Civil Supplies Corporation referred to a report of the criminal case. Admittedly in this case, the Bank Guarantee was issued in lieu of the security of the goods to be supplied. This is also not in dispute that the criminal cases have been registered against the power of attorney holder of the petitioner firm for supply of sub-standard iodized salt.
8. Perusal of the documents would show that challenge was made by the petitioner firm when the State Civil Supplies Corporation refused to make payment of the goods supplied on the ground that the goods were sub-standard. The Division Bench of this Court vide its order dated 04.08.2015 observed that since the agreement contains an arbitration clause, therefore, the dispute should have been raised before the Arbitrator. The document further shows that the dispute was raised before the Arbitrator and on 26.10.2015, stay order has been passed by the Arbitrator that during adjudication of the dispute, the Bank Guarantee shall not be encashed. Consequently, the encashment of the Bank Guarantee which was stayed. In the meanwhile, since there was criminal case pending, the Bank Guarantee was seized and the State Civil Supplies Corporation filed the application under Section 451 of Cr.P.C. to obtain the possession of the Bank Guarantee since the Bank Guarantee itself was seized by the police. The said application for delivery of possession of the Bank Guarantee was refused, however, in the same breath the Court had ordered for extension of Bank Guarantee on the ground that the Bank Guarantee expires on 31.12.2015.
9. Section 451 of Cr.P.C. speaks about the order for custody and disposal of property pending trial in certain cases. Reading of the section would make it clear that when the property is produced before

any criminal Court during enquiry or trial, the Court may make such order as it thinks fit for the purpose of custody of such property pending conclusion of the enquiry or trial. Necessarily in this case, the Bank Guarantee which was seized by the police in criminal case, in the opinion of this Court, would be covered within the definition of the "property" as the Bank Guarantee itself would be a document which cannot die of its own within expiry of the time on 31.12.2015. Since the Bank Guarantee is seized by the police, apart from the fact that the application under Section 17 of Arbitration & Conciliation Act could have been filed before the Arbitrator, in my opinion, the order of extension of Bank Guarantee would not make the order illegal in the sense that by lapse of time, the Bank Guarantee cannot be allowed to die of its own. If the Bank Guarantee itself is allowed to expire with the lapse of time because the criminal cases are filed then this fact also cannot be ignored it would lead to loss of government exchequer of Rs. 1.5 Crore and Rs. 51 Lakhs. Since the Arbitrator is in sesin over the matter, the respondent if so advised may make a suitable prayer in this regard during arbitral proceedings. Further considering the nature of short paucity of time, the order whereby the Bank Guarantee has been directed to be extended cannot be arrested as it would be too technical to defeat the justice. In a result, I do not find any illegality or perversity or any jurisdictional error in it so as to invoke extra ordinary jurisdiction of this Court under Section 482 of Cr.P.C.

10. Accordingly, the petition is dismissed having no merit at the admission stage itself.

**Sd/-**  
**(Goutam Bhaduri)**  
Judge