

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2069 of 2017**

Amit Kumar Jaiswal, Aged about 36 years S/o Shri Govind Prasad Jaiswal, R/o Flat No. A-311, Bhatia Residency, Mangla Raod, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, District Janjgir-Champa, Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District Raipur, Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager, Oriental Bank of Commerce, Vyapar Vihar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents**WPC No. 2074 of 2017**

Shaukat Khan, Aged about 41 years, S/o Shri Kamaluddin Khan, R/o House No. 213, Fareed Nagar, Kohka, Ward No. 8, Tehsil And District Durg, Chhattisgarh.

---- Petitioner**Vs**

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, Durg, District Durg Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur District Raipur Chhattisgarh.
5. Central Bank of India, Through The Branch Manager, Central Bank of India, Civic Center, Bhilai, District Durg, Chhattisgarh.

---- Respondents

WPC No. 2085 of 2017

Ramjeet, Aged about 64 years, S/o Ayodhya Prasad, R/o House No. 74 Shantipur Bilariyaganj, Sagri, District Azamgarh, Uttar Pradesh.

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. The Excise Commissioner Raipur, District Raipur Chhattisgarh.
3. District Excise Officer, District Mungeli Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District Raipur Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager Oriental Bank of Commerce, Vyapar Vihar, Bilaspur District Bilaspur Chhattisgarh.

---- **Respondents**

WPC No. 2079 of 2017

Firtu Ram, Aged about 45 years, S/o Murli Ram, R/o 272, Madvak, Police Station Sarpatahan, District- Jaunpur, Uttar Pradesh.

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, District Janjgir-Champa, Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur, District Raipur, Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager, Oriental Bank of Commerce, Vyapar Vihar, Bilaspur, District Bilaspur, Chhattisgarh.

---- **Respondents**

WPC No. 2090 of 2017

Amar Bahadur Singh, Aged about 50 years, S/o Ram Uday Singh, R/o House No. 184, Bandhgaon, Arsiya Sarpataha, Shahganj, District Jaunpur, Uttar Pradesh.

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. The Excise Commissioner Raipur, District Raipur Chhattisgarh.
3. District Excise Officer, District Durg, Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District Raipur Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager, Oriental Bank of Commerce, Vyapar Vihar, Bilaspur District Bilaspur Chhattisgarh.

---- **Respondents**

WPC No. 2084 of 2017

Yogendra Soni, Aged about 27 years, S/o Shri Leeladhar Swarnkar, R/o House No. 108/ B Bhilai, Camp No. 1, Ward No. 20, Village Chhaoni, District Durg (Chhattisgarh).

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, Durg, District Durg Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur District Raipur Chhattisgarh.
5. Central Bank of India, Through The Branch Manager, Central Bank of India, Civic Center, Bhilai, District Durg, Chhattisgarh.

---- **Respondents**

WPC No. 2075 of 2017

Birendra Pratap Yadav, Aged about 42 years, S/o Shri Ram Asre Yadav, R/o House No. 296, Pakdi Khand-2, Sinhore Kol, Tehsil Budhanpur, District Azamgarh, Uttar Pradesh.

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of

Chhattisgarh, Department of Finance, Mahanadi Bhavan,
Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)

2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, Surajpur District Surajpur, Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur District Raipur Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager, Oriental Bank of Commerce, Vyapar Vihar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

WPC No. 2083 of 2017

Anil Kumar Pandey, Aged about 44 years, S/o Shri Ramkinkar Pandey, R/o House No. 43/2, Pragati Nagar, Quarter GH, Ward No. 21, Village Chhaoni, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Excise Commissioner, Raipur, District- Raipur, Chhattisgarh.
3. District Excise Officer, District- Janjgir Champa, Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District- Raipur, Chhattisgarh.
5. Union Bank of India, Through The Branch Manager, Union Bank of India, Supela, Bhilai, District Durg, Chhattisgarh.

---- Respondents

WPC No. 2072 of 2017

Indresh, Aged about 43 years, S/o Shri Hargen, R/o House No.237, Arsiya, Shahganj, District Jaunpur, Uttar Pradesh.

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, District Raipur, Chhattisgarh.

4. Officer on Special Duty, Department of Excise Raipur, District Raipur, Chhattisgarh.
5. Oriental Bank of Commerce, Through The Branch Manager, Oriental Bank of Commerce, Vyapar Vihar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

WPC No. 2098 of 2017

Anil Kumar Agrawal, Aged about 43 years, S/o Shri Kamal Kishore Agrawal, R/o Flat No. 606, Maruti Heritage, Ward No. 51, Dhamtri Road, Lalpur, Bindranavagarh, Raipur Chhattisgarh.

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, Raipur, District Raipur, Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur District Raipur Chhattisgarh.
5. Punjab National Bank, Through The Branch Manager, Punjab National Bank, Nandini Road (Nehru Nagar), Bhilai, District Durg, Chhattisgarh.

---- Respondents

WPC No. 2089 of 2017

Joginder Singh, Aged about 32 years, S/o Surti Singh R/o House No. 117, Sunder Nagar, Daskhin F, Ward No. 22, Village Chhaoni, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Excise Commissioner, Raipur, District- Raipur, Chhattisgarh.
3. District Excise Officer, District Janjgir-Champa, Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District Raipur, Chhattisgarh.
5. Union Bank of India, Through The Branch Manager, Union Bank of

India, Supela, Bhilai, District Durg, Chhattisgarh.

---- Respondents

WPC No. 2070 of 2017

Kanchan Pal, Aged about 43 years, W/o Shri Lahuri Pal, R/o House No.41, Shastri Chowk, Bhilai Nagar, Ward No.18, Chhaoni, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, District Raipur, Chhattisgarh.
4. Officer on Special Duty, Department of Excise Raipur, District Raipur, Chhattisgarh.
5. Union Bank of India, Through The Branch Manager, Union Bank of India, Supela, Bhilai, District Durg, Chhattisgarh.

---- Respondents

WPC No. 2080 of 2017

Aliraja, Aged about 40 years, S/o Shri Mushiraja, R/o House No. 165/5, Khapri, Post Nandini, District Durg (Chhattisgarh).

---- Petitioner

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer, Durg, District Durg Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur District Raipur Chhattisgarh.
5. Punjab National Bank, Through The Branch Manager, Punjab National Bank, Nandini Road (Nehru Nagar), Bhilai, District Durg, Chhattisgarh.

---- Respondents

AND

WPC No. 2118 of 2017

Asheesh, Aged about 44 years, S/o Shri Vijay Narayan, R/o Village Jamuhariram, Kandharpur, District Azamgarh, Uttar Pradesh.

---- **Petitioner**

Vs

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Finance Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Excise Commissioner, Raipur, District Raipur, Chhattisgarh.
3. District Excise Officer District Janjgir-Chamapa, Chhattisgarh.
4. Officer on Special Duty, Department of Excise, Raipur, District Raipur, Chhattisgarh.
5. UCO Bank, Through Branch Manager, UCO Bank, Old Bus Stand, Bilaspur, District- Bilaspur, Chhattisgarh.

---- **Respondents**

For Petitioners: Mr. R.S. Marhas, Advocate.

For State/Respondents No.1 to 4: -

Mr. Arun Sao, Deputy Advocate General.

For Respondent No.5 – Punjab National Bank in W.P.(C)No.2080/2017: -

Mr. Sachin Singh Rajput, Advocate.

For Respondent No.5 – UCO Bank in W.P.(C)No.2118/2017: -

Mr. Ravindra Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/08/2017

1. The phenomenal common question involved in this batch of writ petitions is, whether the conditional bank guarantee furnished by the petitioners can be invoked by the respondent State without specifying and fulfilling the conditions for invocation of bank guarantee stipulated therein.
2. The essential facts needed to judge the correctness of the plea raised at the Bar are as under: -

2.1) The petitioners were the licensees for retail sale of foreign/country made liquor granted by the Department of Excise of the State of Chhattisgarh under the provisions of the Chhattisgarh Excise Act, 1915 read with the provisions of the Chhattisgarh Excise Settlement of Licenses for Retail Sale of Country/Foreign Liquor Rules, 2002 (for short, 'the Rules, 2002'). Under the provisions of the said Rules, 2002, the excise year for the subject license was from 1-4-2016 to 31-3-2017 as such, the said contract for license so granted stood expired on 31-3-2017.

2.2) Under Rule 13 of the Rules, 2002, 'letter of guarantee' was furnished by the petitioners to the District Excise Officer with the respondent No.5 Bank and in turn, the said Bank had undertaken to pay the Government an amount mentioned therein in the event of any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach of the said licensees i.e. the petitioners of any of the terms or conditions contained in the said license/agreement. The said letter of guarantee was executed by the petitioners (licensees) for the period up to 30-6-2017. Thereafter, respondent No.4 issued a letter dated 23-6-2017 filed along with the writ petition to all the Assistant Commissioners/District Excise Officers of the State to recover the balance amount of license fee/duty/ surcharge/penalty from the groups/licensees against whom it is pending from their security amount/bank guarantee. In continuation of the said direction, a further direction has been issued vide letter dated 29-6-2017 stating that after recovery of the balance amount of license

fee/duty/surcharge/ penalty, the remaining part of bank guarantee should remain intact. It has further been directed that those bank guarantee which was not used for any of the recoveries should get extended from the bank and finally, a direction has been issued by the impugned direction Annexure P-1 dated 30-6-2017 modifying the earlier direction and it has been directed that if, for any reason, the extension of bank guarantee is not possible, then the amount of bank guarantee should be kept in custody by revoking the said guarantee. The aforesaid memo dated 30-6-2017 (Annexure P-1) has been challenged in this batch of writ petitions filed by the respective petitioners.

2.3) Return has been filed by the State/respondents No.1 to 4 stating inter alia that the impugned memo Annexure P-1 has been issued under the direction issued by the Commissioner of Central Excise regarding imposition of service tax on the license fee of the licensee. It has further been stated that though a direction has been issued vide letter dated 29-6-2017 (Annexure R-9) to release the bank guarantee of licensee after satisfying the dues of license fee/duty/surcharge/TCS/penalty, but the letter dated 30-6-2017 has been issued for revocation of bank guarantee only on the basis of letter of the Central Excise Department, therefore, the writ petitions deserve to be dismissed.

2.4) Return has been filed on behalf of the State/respondents No.1 to 4 in one petition namely W.P.(C)No.2069/2017 and in remaining all writ petitions, adoption memo have been filed, as such, return filed in this case has been adopted in all other cases.

2.5) No rejoinder has been filed.

3. Since common question of law and fact is involved in this batch of writ petitions, they are clubbed together and heard analogously and are being disposed of by this common order. Facts of the case have been taken from the lead case bearing W.P.(C) No.1812/2017 (Arvind Panda v. State of Chhattisgarh and others).
4. Mr. R.S. Marhas, learned counsel appearing for the petitioners in all the writ petitions, would submit that bank guarantee furnished by the petitioners to the District Excise Officer was a conditional bank guarantee under the terms mentioned therein and therefore such a bank guarantee could not be directed to be invoked/encashed by the State until the conditions stipulated in the bank guarantee are satisfied. Therefore, the order Annexure P-1 directing encashment of bank guarantee deserves to be quashed.
5. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/respondents No.1 to 4 would submit that on the basis of instructions issued by the Commissioner of Central Excise and Service Tax such a direction Annexure P-1 has been issued and as such, the writ petitions as framed and filed without impleading the Commissioner of Central Excise and Service Tax, are not maintainable and deserve to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
7. In order to understand the dispute, particularly the nature of bank guarantee as to whether such a bank guarantee is a conditional

bank guarantee, the relevant conditions as mentioned in the guarantee deed are required to be noticed which are reproduced herein-below: -

GUARANTEE BOND

(1) We Oriental Bank of Commerce, Vyapar Vihar, Bilaspur (hereinafter referred to as "the bank") At the request of Mr. Amit Kumar Jasiwal (Contractors) do hereby undertake to pay the government an amount not exceeding Rs.4304403/- Rs. (Forty Three Lack Forty Four Thousand Three Only) against any loss or damage caused to or suffered or would be caused to or suffered by the government by reason of any breach by the said contractor(s) of any of the term or condition contained in said agreement.

(2) We Oriental Bank of Commerce, Vyapar Vihar, Bilaspur do hereby undertake to pay the amounts due the payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the contractors of any of the terms of conditions contained in said Agreement or by reason of the contractors failure to perform the said Agreement, any such demand made on the bank shall be conclusive as regard the amount due the payable by the bank under this guarantee. However, our liability."

8. On a focused glance of the aforesaid conditions, it is quite vivid that the State is empowered to encash the bank guarantee only if the intimation is given by the Department stating the amount claimed which is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the licensee/contractor of any of the terms or conditions contained in the said license/agreement or by reason of the licensee contractor failure to perform the said agreement. At this juncture, it would also be appropriate to notice the memo Annexure P-1 dated 30-6-2017, which has been impugned by the petitioners and by

जांजगीर दिनांक 30 / 06 / 2017

संदर्भ: कार्यालय अधिकारी आयुक्त, छत्तीसगढ़ रायपुर का पत्र
क्रमांक/आय/टेका/2017/2931 दिनांक 30.06.2017।

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अतः इस पत्र को ही आप **Revoke** (प्रतिसंहत) करने की सूचना माने । जमा बैंक गारंटी का विवरण निम्नानुसार है:-

क्रं	स्मूह क्र.	स्मूह का राम	लायसेंसी का नाम	बैंक का नाम	बैंक गारण्टी क्रमांक व दिनांक	वैधता तिथि	जमा राशि
1	2	3	4	5	6	7	8
1	9	पामगढ	अमित कुमार जायसवाल आ. गोविंद प्रसाद जायसवाल	ओरियन्टल बैंक आफ कॉमर्स, बिलासपुर	51850001216 Date 26-04-2016	30.06.2017	4304403
2	36	सिंधरा	थरतू राम आ, मुरलीराम	ओरियन्टल बैंक आफ कॉमर्स, बिलासपुर	51850001216 Date 26-04-2016	30.06.2017	1501196
योग							5805599

संलग्न:- बैंक गारंटी की मूलप्रति।

9. The direction contained in the aforesaid letter is quite clear. It neither states that the conditions stipulated in the bank guarantee nor it specifies the terms of the deed of the guarantee. It nowhere states that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by any reason of breach by the licensee contractor of any of the terms and conditions contained in the said license/agreement or if the licensee contractor has failed to perform the said agreement. Therefore, it does not fulfill any of the requirements stipulated in paras 1 and 2 of the bank guarantee furnished by the petitioners. Nothing is stated in the said direction about the loss or damage suffered by the Department.
10. Pursuant to the memo dated 30-6-2017, the Assistant Commissioner (Excise) has issued letter seeking revocation of bank guarantee from the respondent Bank on the same date i.e. 30-6-2017. Thus, the order of the Assistant Commissioner is based on the order of the Excise Commissioner dated 30-6-2017
11. It is settled law that a bank guarantee can only be encashed as per its terms and the extent of default has to be averred and to that extent it is encashable nothing more, nothing less and the court will intervene to prevent any action on the part of the beneficiary which may be contrary to the terms of the bank guarantee.
12. The law with regard to invocation of bank guarantee / encashment of bank guarantee which received consideration from time to time

by the Supreme Court of India, is well settled, which may be noticed herein profitably and gainfully as well.

12.1) In the matter of **Hindustan Construction Co. Ltd. v. State of Bihar and others**¹, the Supreme Court has categorically held that grant of injunction against invocation of bank guarantee shall be in accordance with the terms of the bank guarantee and the amount covered by the guarantee shall be payable only if obligations under the contract are not fulfilled by the contractor and held as under: -

“7. 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. Co-operative Federation Ltd. v. Singh Consultants and Engineers Pvt. Ltd.](#), [1988] 1 SCC 174, the law laid down in [Bolivinter Oil SA v. Chase Manhattan Bank](#), (1984) 1 All ER 351 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

1 AIR 1999 SC 3710

case of fraud or irretrievable injury. In [Svenska Handelsbanken v. Indian Charge Chrome](#), (1994) 1 SCC 502/(1993 AIR SCW 4002 : AIR 1994 SC 626); [Larsen and Toubro Ltd. v. Maharashtra State Electricity Board](#), (1995) 6 SCC 68 : (1995 AIR SCW 4134 : AIR 1996 SC 334); [Hindustan Steel Works Construction Ltd. v. G.S. Atwal and Co. \(Engineers\) \(P\) Ltd.](#), (1995) 6 SCC 76 : (1995 AIR SCW 3821 : AIR 1996 SC 131); [National Thermal Power Corporation Ltd. v. Flowmore \(P\) Ltd.](#), (1995) 4 SCC 515 : (1995 AIR SCW 430 : AIR 1996 SC 445); [State of Maharashtra v. National Construction Co.](#), (1996) 1 SCC 735 : (1996 AIR SCW 895 : AIR 1996 SC 2367); [Hindustan Steel Works Construction Ltd. v. Tarapore and Co.](#), (1996) 5 SCC 34 : (1996 AIR SCW 2861 : AIR 1996 SC 2268) as also in [U.P. State Sugar Corporation v. Sumac International Ltd.](#), (1997) 1 SCC 568 : (1997 AIR SCW 694 : AIR 1997 SC 1644 : 1997 All LJ 638), the same principle has been laid down and reiterated.

8. 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.

13. This condition clearly refers to the original contract between the HCCL and the defendants and postulates that if the obligations, expressed in the contract, are not fulfilled by HCCL giving to the defendants the right to claim recovery of the whole or part of the "Advance Mobilization Loan", then the Bank would pay the amount due under the Guarantee to the Executive Engineer. By referring specifically to Clause 9, the Bank has qualified its liability to pay the amount covered by the Guarantee relating to "Advance Mobilization Loan" to the Executive Engineer only if the obligations under the contract were not fulfilled by HCCL or the HCCL has misappropriated any portion of the "Advance Mobilization Loan". It is in these circumstances that the aforesaid clause would operate and the whole of the amount covered by the "Mobilisation Advance" would become payable on demand. The Bank Guarantee thus could be invoked only in the circumstances referred to in Clause 9

whenever the amount would become payable only if the obligations are not fulfilled or there is misappropriation. That being so, the Bank Guarantee could not be said to be unconditional or unequivocal in terms so that the defendants could be said to have had an unfettered right to invoke that Guarantee and demand immediate payment thereof from the Bank. This aspect of the matter was wholly ignored by the High Court and it unnecessarily interfered with the order of injunction, granted by the single Judge, by which the defendants were restrained from invoking the Bank Guarantee.”

12.2) Thereafter, the Supreme Court in the matter of **Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.**² succinctly

held, after considering the law, as under: -

“10. The law relating to grant or refusal to grant injunction in the matter of invocation of a bank guarantee or a letter of credit is now well settled by a plethora of decisions not only of this Court but also of the different High Courts in India. In U.P. State Sugar Corporation v. Sumac International Ltd.³ this court considered its various earlier decisions. In this decision, the principle that has been laid down clearly on the enforcement of a bank guarantee or a letter of credit is that in respect of a bank guarantee or a letter of credit which is sought to be encashed by a beneficiary, the bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. Accordingly this Court held that the courts should be slow in granting an order of injunction to restrain the realization of such a bank guarantee. It has also been held by this Court in that decision that the existence of any dispute between the parties to the contract is not a ground to restrain the enforcement of bank guarantees or letters of credit. However, this court made two exceptions for grant of an order of injunction to restrain the enforcement of a bank guarantee or a letter of credit; (i) fraud committed in the notice of the bank which would vitiate the very foundation of guarantee; and (ii) injustice of the kind which would make it impossible for the guarantor to reimburse himself.

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 :-

2 (2007) 8 SCC 110

3 (1997) 1 SCC 568

(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.”

12.3) Further, in this context, the judgment rendered by Their Lordships of the Supreme Court in the matter of **Vinitec Electronics Private Ltd. v. HCL Infosystems Ltd.**⁴ may be referred herein in which Their Lordships referred with approval the judgment rendered in **Himadri Chemicals Industries Ltd.'s** case (supra) and held as under: -

“12. It is equally well settled in law that bank guarantee is an independent contract between bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and of no

4 (2008) 1 SCC 544

consequence. In *BSES Ltd. v. Fenner India Ltd.* this Court held: (SCC pp. 733-34, para 10)

“10. There are, however, two exceptions to this rule. The first is when there is a clear fraud of which the bank has notice and a fraud of the beneficiary from which it seeks to benefit. The fraud must be of an egregious nature as to vitiate the entire underlying transaction. The second exception to the general rule of non-intervention is when there are 'special equities' in favour of injunction, such as when 'irretrievable injury' or 'irretrievable injustice' would occur if such an injunction were not granted. The general rule and its exceptions has been reiterated in so many judgments of this Court, that in *U.P. State Sugar Corpn. v. Sumac International Ltd.* (hereinafter '*U.P. State Sugar Corpn.*') this Court, correctly declared that the law was 'settled'.”

12.4) The principle of law laid down in **Himadri Chemicals Industries Ltd.'s** case (supra) has been followed recently by the Supreme Court in the matter of **Gujarat Maritime Board v. L & T Infrastructure Development Projects Ltd. and others**⁵ in which it has been held as under: -

“... The bank guarantee is a separate contract and is not qualified by the contract on performance of the obligations. No doubt, in terms of the bank guarantee also, the invocation is only against a breach of the conditions in the LOI. ...”

12.5) A Division Bench of the M.P. High Court in the matter of **G.V. Pratap Reddy v. M.P. Rural Road Development Authority, Bhopal and others**⁶ while somewhat dealing with identical facts situation held that the bank guarantee is a conditional one, such a bank guarantee could not have been directed to be encashed until the conditions mentioned in the bank guarantee are satisfied. The Division Bench speaking through R.K. Gupta, J, held as under: -

“6. On the basis of the aforesaid two conditions it is

5 AIR 2016 SC 4502

6 W.P.No.10030/2008 decided on 29-6-2009

clear that the bank guarantee is a conditional one and bank was required to encash the bank guarantee only if the intimation is given by the department stating that the amount claimed is due by way of loss or damage caused to or suffered by reason of any breach by the said Contractor of any of the terms or conditions contained in the said agreement or by reason of the Contractor's failure to perform the said agreement. It is also clear that the bank has undertaken to pay an amount not exceeding Rs.34,64,000/- against any loss or damage caused to or suffered or would be caused to or suffered by any authority by reason of any breach by the said contractor of any of the terms or conditions contained in the said agreement.

13. According to us, the law laid down by the Apex Court as aforesaid has the full application in the present case. We have also taken a similar view in the case of *Sigma Construction v. M.P. Rural Road Development Authority & others*, W.P.No.11022/2008 decided on 30.4.2009 wherein similar question in relation to encashment of bank guarantee was involved and we held that if the department has not written anything to the bank while directing the bank to encash the bank guarantee, the bank guarantee cannot be invoked. It is not stated that the contractor has failed to perform the work contract then in absence of any such reference resulting into loss or damage caused or to be caused, the bank is not under a legal obligation to encash the bank guarantee. We also held that the bank guarantee was not entitled to be invoked. The facts and circumstances of the present case are also similar to the case already decided by this Court in *Sigma Construction* (supra)."

12.6) A Division Bench of the Delhi High Court in the matter of **M/s. Punj Sons (P) Ltd. v. Hong Kong & Shanghai Banking Corporation and another**⁷ after examining the decision of the Supreme Court and its own decisions observed,

"... the basic principles that emerge on a resume of the case law on the subject are : firstly, that in any given case, what is of relevance is terms of the bank guarantee, and that in fact constitutes the only guiding factor ; and secondly, the next determining point would be the manner in which the bank guarantee had been invoked by the beneficiary, and in that context the terms of the demand letter assume great importance as well as significance."

7 DRJ 1991(20)

12.7) In the matter of **National Aluminium Co. Ltd. v. M/s. R.S. Builders (India) Ltd. and others**⁸ wherein the Orissa High Court speaking through B.L. Hansaria, CJ (as then His Lordship was), held as under: -

“9. From the aforesaid decisions it is clear that Court's interference in enforcing bank guarantees must be minimal. It is in the case of fraud or to prevent irretrievable injustice that Courts interfere to prevent enforcement of bank guarantees. Of course, a bank guarantee has to satisfy the conditions laid down therein before a bank can be called upon to make payment as per the guarantee. If the terms of the bank guarantee be unconditional, the bank has to pay without demur. The payment of bank guarantee cannot be made subject to the claims and counter-claims arising out of the main contract between the parties. If a bank guarantee were to state that payment shall be made notwithstanding any dispute between the parties, the bank would be obliged to do so. To determine whether a bank guarantee is conditional or unconditional, it is the document guarantee which is to be scanned.

11. In view of the law noticed earlier, we would state that the aforesaid type of bank guarantee has to be regarded as independent of the contract between the parties and the same can be enforced without reference to any claim or counter-claim arising out of the main contract between the parties. It is also to be regarded as independent of the adjudication of disputes raised and proposed to be referred to arbitration. But then, the bank guarantees at hand cannot be regarded as absolutely unconditional inasmuch as the payment under guarantees is dependent upon the contractor committing default in performing any of the terms and conditions of the contract or in the payment of any money due to the owner or in case the amount at the specified rates cannot be deducted from the running bills of the contractor by the owner towards the payment of Mobilisation Advance. As to the fulfillment of those conditions, we would state that the statement of the beneficiary would be taken at its face value unless the contractor be in a position to establish that the stand of the beneficiary is actuated by fraud, misrepresentation, deliberate suppression of material facts or the like which would give rise to special equities in favour of

the contractor. So, in the absence of a case of fraud, misrepresentation, deliberate suppression of material facts or the like, to establish which a heavy onus lies on the contract, a bank guarantee like the one at hand has to be honoured by the bank and the beneficiary cannot be restrained from enforcement. Further, decision about fraud, etc. has to be arrived at by the court approached by the contractor to restrain the beneficiary from enforcing the bank guarantee. The court cannot await for this purpose the finding of the arbitrator.”

13. The Supreme Court in the matter of **U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.**⁹ approved the observations of Lord Denning, M.R., that “a bank which gives a performance guarantee must honour that guarantee according to its terms. It 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 supplier is in default or not. The bank must pay according to its guarantee, on demand if so stipulated without proof or conditions.”
14. From the afore-stated judgments of the Supreme Court, it is quite vivid that in order to invoke the conditional bank guarantee, the conditions/terms of the bank guarantee i.e. default, if any, has to be expressly averred in order/direction memo encashing bank guarantee, nothing more and nothing less is acceptable, before it can be directed to be encashed.
15. In the present case, it appears that the default (if any) in the conditions/terms of bank guarantee while directing the bank to encash the same are not averred in the memo directing encashment of bank guarantee, whereas the bank guarantee was

⁹ (1988) 1 SCC 174

liable to be invoked against any loss or damage caused to or suffered or would be caused to or suffered by the authority by reason of any breach by the licensee / contractor of any of the terms and conditions contained in the said agreement. There is no averment in the memo dated 30-6-2017 (Annexure P-1) issued by respondent No.4 intimating the bank for encashment of bank guarantee regarding loss or damage caused to or suffered or would be caused to or suffered by the authority by reason of any breach by the licensee/ contractor of any of the terms and conditions contained in the said agreement. It records no reason as to why the bank guarantee is directed to be invoked. It simply states the ground that it is not possible to renew the bank guarantee, it has been directed to be invoked. Thus, in absence of any averment in the impugned order with reference to any loss or damage caused to or suffered or would be caused to or suffered by the authority by reason of any breach by the said contractor of any of the terms and conditions contained in the said agreement, bank guarantee was not liable to be invoked and it could have not been directed to be invoked.

16. However, the matter can be considered from one more other angle.

Rule 13 of the Rules, 2002, provides for payment of license fee and security amount. Rules 13 provides as under: -

“13. Payment of Licence-fee and security amount.—

In case an applicant is selected as licensee, he shall deposit one month's amount of licence fee and the security amount within three days of being informed of his selection. If he fails to deposit the amount of one month licence fee and security amount within prescribed period, his selection shall stand cancelled and the said licensee shall be debarred from holding any excise

licence in future, anywhere in the State and his application fee shall also stand forfeited. A consolidated list of such defaulters under this rule, along with their complete addresses shall be forwarded by the District Excise officer/Asstt. Commissioner to the Excise Commissioner, who will circulate the consolidated list of the State to all the licensing authorities of the State.”

17. Security was furnished by way of bank guarantee as provided under Rule 13 of the Rules, 2002. Rule 21 of the Rules, 2002 deals with adjustment/refund of security amount. It states as under: -

“21.Adjustment/refund of security Amount.—The security amount shall be liable to adjustment against the settlement of dues and claims to the government of licence fee/duty penalty or any other dues. Security amount shall be refundable after the final settlement of all the claims and dues to the State Government.”

18. A conjoint reading of the aforesaid two Rules would make it clear that licensee should furnish the security which can be adjusted against the settlement of dues and claims regarding the contract for which license was awarded and it is refundable after settlement of all the claims and dues to the State Government. It is, thus, crystal clear that excepting the claims and dues of the State Government the security, as furnished by the licensee, cannot be utilized for any other purpose. The contention of the State that direction has been issued by the Commissioner of Central Excise regarding imposition of service tax on the license fees of the licensee deserves to be noticed for rejection. Firstly, in the order Annexure P-1 no such reason has been assigned by respondent No.4 and even that is not the terms/conditions in the bank guarantee issued by the Bank, therefore it cannot be the reason for directing invocation of bank guarantee and for that reason, the

bank guarantee cannot be invoked and encashed.

19. In view of above-mentioned analysis, this Court is of the considered opinion that the bank guarantee furnished by the petitioners which was conditional in nature, cannot be directed to be encashed dehors the terms / conditions of bank guarantee by the impugned memo (Annexure P-1) and the reason assigned subsequently in the returns filed is unacceptable, that cannot be made basis for invoking and directing encashment of bank guarantee. Such a direction issued by the Commissioner, Excise is contrary to the terms/conditions of bank guarantee, and irrational and arbitrary as well.
20. As a fallout and consequence of above-stated discussion, the impugned memo (Annexure P-1) in all the above-stated writ petitions, particulars of bank guarantee of which are enclosed as Annexure 'A' with this order, are quashed and it is held that the respondents/State are not entitled to invoke / encash the bank guarantee.
21. Accordingly, the present petitions stand allowed. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

CHART SHOWING DETAILS OF BANK GUARANTEE AND ORDER IMPUGNED

Writ Petition No.	Particulars of Bank Guarantee	Date of Issue	Date of impugned memo
2069 of 2017	51850001216	26/04/2016	30/06/2017
2070 of 2017	43810 IGL 0000816	29/04/2016	01/07/2017
2072 of 2017	51850000916	26/04/2016	30/06/2017
2074 of 2017	0078916 BG 5700076	12/07/2016	30/06/2017
2075 of 2017	51850001116	26/04/2016	30/06/2017
2079 of 2017	51850001316	26/04/2016	30/06/2017
2080 of 2017	2158 ILG 000716	29/04/2016	30/06/2017
2083 of 2017	43810 IGL 0000716	29/04/2016	28/06/2017
2084 of 2017	0078916 BG 700052 & 0078916 BG 5700059	06/05/2016& 18/05/2016	30/06/2017
2085 of 2017	51850001416	29/04/2016	30/06/2017
2089 of 2017	43810 IGL 0000916	29/04/2016	28/06/2017
2090 of 2017	51850001016	26/04/2016	01/07/2017
2098 of 2017	2158 ILG 001016 2158 ILG 001516 2158 ILG 001416	29/04/2016 18/05/2016 18/05/2016	30/06/2017
2118 of 2017	02601 GPER 000816	30/04/2016	30/06/2017