

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
Commercial Division
(Via Video Conference)

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

AP/242/2021

Bharat Heavy Electricals Limited – Electronics Division.

-vs-

The West Bengal State Electricity Distribution Co. Ltd. & Anr.

For the petitioner	: Mr. Jishnu Saha, Sr. Adv. Mr. Touseef Khan, Mr. Arindam Paul, Mr. Parul Mukherjee,
For the respondent	: Mr. Partha Sarathi Bhattacharya, Mr. S. S. Koley,
Heard on	: 14.12.2021, 16.12.2021, 22.12.2021
Judgment on	: 20.01.2022

Ravi Krishan Kapur, J.:

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act").

The facts:-

2. The disputes between the parties arise out of a notice inviting an E-Tender for setting up a 10 MW Solar Photovoltaic Power Plant at Mejia, District-Bankura, West Bengal. Pursuant to the aforesaid

notice, the petitioner was awarded a Letter of Award dated 6 September, 2016 (LOA). The LOA contains all the terms and conditions of the contract between the parties. Clause 13 of the LOA provides that the petitioner was to submit a performance bank guarantee for an amount not less than 10% of the total value of the contract. Clause 32 of the LOA also provides for an arbitration clause.

3. In terms of clause 13 of the LOA, the petitioner through its banker furnished a performance bank guarantee to the respondent no.1. The bank guarantee dated 19 August, 2016 (the guarantee) inter alia provides as follows:

Dear Sirs,

In consideration of West Bengal State Electricity Distribution Company Ltd., (herein after referred to as the "Owner" which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to **Bharat Heavy Electricals Limited** with registered/Head Office at BHEL House, Siri Fort, New Delhi – 110049 (hereinafter referred to as "Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns), a Contract issued by Letter of Intent Memo No.SPGD/Mejia/55/04 dated 30.07.2016 for Design & Engineering, Manufacture / Procurement, Supply of Equipment and materials, testing at manufacture's works, inspection, necessary clearance, packing and forwarding, unloading at site, associated civil works, services, permits, installation and incidentals, erection, testing & commissioning with warranty obligation and 5 (five) years Comprehensive Operation and Maintenance of 10 MW Solar PV Power Plant at Mejia, Bankura, West Bengal (scope of work) and the same having been acknowledged by the Contractor, resulting in a Tender ID No.2016_WBSED_1 dated 27.01.2016 Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to Rs.5,60,62,267/- (INR Five Crores Sixty Lacs Sixty Two Thousand Two Hundred Sixty Seven only) being (10%) (Ten percent) of the said value of the Contract to the Owner.

We, **Punjab National Bank, Gate No.1, BHEL Campus, Deepanjali Nagar, Mysore Road, Bangalore 560026** having its Head Office at No.7, Bhikaji Cama Place, New Delhi 110607 (hereinafter referred to as the "Bank", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators,

executors and assigns) do hereby guarantee and undertake to pay the Owner, on demand any or all monies payable by the Contractor to the extent of Rs.5,60,62,267/-(INR Five Crores Sixty Lacs Sixty Two Thousand Two Hundred Sixty Seven only) as aforesaid at any time up to 30/10/2017 without any demur, reservation, contest, recourse or protest and/or without any reference to this Contractor.

Any such demand made by the Owner on the bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any Court, Tribunal Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Owner and further agrees that the guarantee herein contained shall continue to be enforceable till the Owner discharges this guarantee.

The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under the guarantee from time to time to extend the time for performance or the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor and to exercise the same at any time in any manner and either to enforce or to forbear to enforce any covenants, contained or implied in the Contract between the Owner and the Contractor or any other course or remedy or security available to the Owner. The Bank shall not be relieved of its obligations under these presents by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of omission or commission on the part of the Owner or any other indulgences shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank.

The bank also agrees that the Owner at its option shall be entitled to enforce this guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to Rs.5,60,62,267/-(INR Five Crores Sixty Lacs Sixty Two Thousand Two Hundred Sixty Seven only) and it shall remain in force upto and including 30.07.2017 and shall be extended from time to time for such period as may be desired by Bharat Heavy Electricals Limited on whose behalf this guarantee has been given.

Unless a demand or claim is lodged on us within and including 30/10/2017 we shall be discharged from all liabilities thereafter.

Notwithstanding anything contained herein:

1. Our liability under the Bank Guarantee shall not exceed Rs.5,60,62,267/- (INR Five Crores Sixty Lacs Sixty Two Thousand Two Hundred Sixty Seven only)
2. This Bank Guarantee shall be valid up to 30-07-2017.
3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if you serve upon us a written claim or demand on or before 30-10-2017.

4. Subsequently, disputes and differences have arisen between the parties. By a letter dated 24 May, 2021, the respondent no.1 invoked

the guarantee. Significantly, prior to invocation of the guarantee, the respondent no.1 had issued a show-cause notice dated 25 November, 2020 and ultimately terminated the contract by a letter dated 5 April, 2021. The letter of invocation dated 24 May, 2021 inter alia provides as follows:

Memo No:SPGD/Acctt./BG/33/58

To,
The Branch Manager,
Punjab National Bank,
BHEL Complex, Mysore Road,
Pates Puttanna Industrial Estate,
Deepanjali Nagar, Bangalore Urban,
Bengaluru, Karnataka-560026

Subject: Invocation of Contract Performance Bank Guarantee

Ref: i) LOA No.:SPGD/Mejia/51/24 dt. 06/09/2016

ii) Letter of Termination vide memo no.: CE/SPGD/BHEL/21/03 dt.05.04.2021

Dear Sir,

This is to inform you that the LOA, as referred above, has been terminated (enclosed). In accordance to the Clause No.14 of the said LOA, we lodge our claim for invocation of the Contract Performance Bank Guarantee no.4247ILG002016 dt. 19/08/2016.

The details of the Performance Bank Guarantee are mentioned in the table below:

Existing BG No. & Issue date	Name of the Bank	Purpose	Value	LOA Reference No. & Date	Valid Upto (Existing PBG)	Claim Period Upto (Existing PBG)
4247ILG002016 dt.19/08/2016	PNB	Contract Performance	Rs.5,60,62,267.00	SPGD/Mejia/51/24 dt.06/09/2016	30/07/2022	30/10/2022

The invoked amount may kindly be transferred to our current Bank A/c No.36548991592 of State Bank of India, Bikash Bhawan G.O.C. Branch having IFSC Code SBIN0007816, within 7 days from the receipt of this letter or Demand Draft may be issued in favour of West Bengal State Electricity Distribution Company Limited payable at Kolkata.

Your kind early cooperation is solicited.

Encl:

Yours faithfully,

Sd/-

(P.K. Nag)

Chief Engineer

Solar Power Generation Department

5. In this application, the petitioner seeks an order restraining the respondent no.1 from claiming or receiving any payment under the guarantee.

Submissions of the parties:-

6. The primary contention on behalf of the petitioner is that the demand for invocation of payment under the guarantee must clearly state the exact monies which are payable by the petitioner. Accordingly, since the invocation is not in terms of the guarantee invocation of the same is liable to be restrained. In this connection the petitioner relies on the decisions reported in *Hindustan Construction Co. Ltd. vs. State of Bihar & Ors.* (1999) 8 SCC 436 (paras 9, 13, 14, 19, 20 and 21), *Basic Tele Services Ltd. vs. Union of India & Anr.* 2009 SCC OnLine Del 1657 (paras 28, 29, 33, 34, 40, 44, 46 to 51 and 56 to 58) and *M/s. KSE Electricals Pvt. Ltd. vs. The Project Director, Bangladesh Rural Electrification Board and Anr.* (paras 19 and 27).
7. It is further submitted on behalf of the petitioner that there is no money due and payable by the petitioner to the respondent no.1. It is also alleged on behalf of the petitioner that since no pecuniary liability

has arisen for an alleged breach in the facts of this case, the Court has to determine whether, the party complaining of breach is entitled to damages. In this connection, reliance is placed on the *Gangotri Enterprises Ltd. vs. Union of India* (2016) 11 SCC 720 (paras 36, 37 and 40); and *Kailas Nath Associates vs. Delhi Development Authority & Anr.* (2015) 4 SCC 136 (paras 33 & 43).

8. It is further alleged on behalf of the petitioner that there is no mention in the termination letter issued by the respondent no.1 of any risk purchase having being made or any losses or damages having been sustained by the respondent no.1. It is also submitted on behalf of the petitioner that a guarantee by its very nomenclature is for contract performance. Since the contract has been performed, as would be evident from the Certificate of Commissioning, there are no grounds for invocation of the guarantee.

9. Upon this application being moved, by an order dated 21 June, 2021, the respondent no.1 had been restrained from invoking the guarantee. The matter has appeared after the filing of affidavits.

10. On behalf of the respondent it is submitted that, there are no grounds whatsoever for restraining invocation of the guarantee. It is

further alleged that the petitioner is in breach of its obligation under the contract. It is further submitted that, save and except a bald assertion of fraud in the main application, there is no other case made out for restraint of the guarantee. It is further submitted that, it has been repeatedly reiterated by the different Courts including the Hon'ble Supreme Court that the Court should generally be slow in interfering with the bank guarantees. In this connection, reliance is placed on *UP State Sugarcane Corporation Vs. Sumac International Limited 1997(1) SCC 568 at para 12.*

The law:

11. The following well settled principles emerge from the various decisions not only of Indian Courts but also of other jurisdictions:

a) Section 126 of the Indian Contract Act 1872 defines a “contract of guarantee” as a contract to perform the promise or discharge the liability of a third person in case of his default. In *Halsbury's Laws of England [4th Edition para 101 Volume 20]* a bank guarantee has been defined as “an accessory contract whereby the promisor undertakes to be answerable to the promisee for the debt, default or miscarriage of another person whose primary liability to the promisee must exist or be contemplated”.

b) Bank guarantees are a common method of payment in the mercantile world and have been described as the “**the life blood of international commerce** (as per Kerr L.J. In *R.D. Harbottle (Mercantile) Ltd. vs. National Westminster Bank Ltd.* [1978] Q.B. 146 at 155 where they are treated as equivalent to cash. It is for this reason that Donaldson L.J. in a commonly cited passage observed “**Irrevocable letter of credit and bank guarantees given in circumstances such that they are equivalent to an irrevocable letters of credit have been said to be the life blood of commerce. Thrombosis will occur if, unless fraud, is involved, the courts intervened and thereby disturbed the mercantile practice of treating rights thereunder as being equivalent to cash in hand**”. [*Intraco vs. Notis Shipping Corporation of Liberia the Bhoja Trader* [1981] 2 Lloyds Report 256 at 257].

c) The Courts are ordinarily slow in granting an order of injunction to restrain the working of a bank guarantee. **U.P. State Sugar Corporation vs. Sumac International Ltd. (1997) 1 SCC 568** at para 12, **Himadri Chemicals Industries Ltd. vs. Coal Tar Refining Company (2007) 8 SCC 110** at para 14 (iii).

d) A bank guarantee is a distinct, separate and independent contract and absolute in nature. Such a contract is independent of the underlying contract or the matrix contract between the beneficiary and the principal debtor or the person at whose instance the bank guarantee has been issued. It is a fundamental feature of bank

guarantees that contracts relating to them are autonomous and separate from the underlying contract. The bank is not concerned in any way with the merits or the demerits of the underlying transactions. It is only in well known and extremely exceptional circumstances should a Court interfere with payment under bank guarantees always bearing in mind that free and unrestricted flow of normal commercial dealings is a prime consideration. ***Andhra Pradesh Pollution Control Board vs. CCL Products (India) Limited 2019 SCCOnLine SC 985*** at para 19, ***Ansal Engineering Projects Ltd. vs. Tehri Hydro Development Corporation Ltd. and Ors. (1996) 5 SCC 540*** at paras 4 and 5, ***Hindustan Steel Works Construction Ltd. vs. Tarapore & Co. & Ors. (1996) 5 SCC 34*** at para 14, ***Federal Bank Ltd. Vs. M Jog Engineering Ltd. (2001) 1 SCC 633*** at para 55. ***State of Maharashtra & Anr. Vs. National Construction Company Bombay and Another (1996) 1 SCC 735*** at para 13.

e) What is of essence in such matters are the terms of the bank guarantee. These are extremely significant, decisive and material. A bank guarantee must be construed independently on its own terms. In every case, what has to be ascertained is whether the bank guarantee is in unequivocal and in clear terms that is to say, whether it is conditional or unconditional and whether it clearly recites that the amounts thereunder are to be paid without demur or protest. Then, there is always the question of whether the invocation of a bank guarantee is in terms of the bank guarantee or else the invocation may

be bad. It is important that, whilst interpreting the bank guarantee not to get entwined into the terms and conditions of the underlying contract between the beneficiary and the principal debtor. This intermingling is prohibited unless the terms and conditions of the bank guarantee so provide in clear and identifiable terms. ***Mahatma Gandhi Sahakra Sakkare Karkhane v. National Heavy Engineering Cooperative Ltd. & Anr. AIR 2007 SC 2716*** at paras 22 and 28, ***Eastern Countries Building Society vs. Russell (1947) 1 All ER 500*** at 502-503.

f) In the absence of fraud, irretrievable injustice or some special equities the Courts ought not interfere with the working of a bank guarantee as long as the bank guarantee has been lawfully invoked. The evidence of the fraud which is demanded is required to be of an egregious nature which is such as to vitiate the entire underlying transaction or such that the beneficiary seeks to take advantage of some exceptional situation. There must also be clear and convincing evidence both as to the fraud and as to the bank's knowledge of the fraud. Fraud which vitiates the contract ordinarily must have a nexus with the acts of the parties prior to entering into the contract. Simple breach of contract occurring subsequently on the part of a party would not vitiate the guarantee itself. Nor would breach of contract alone lead to the conclusion that fraud has been committed. The other exceptions of irretrievable injury and special equities can only be invoked in exceptional or rare cases. The rule is that special equity or the case of irretrievable injury must be of an exceptional nature. It must be one of

those rare cases where a future decree for money in favour of the guarantor proves to be unrealisable or uncollectible which would be equivalent to putting a party in an irretrievable situation. Special equities or irretrievable justice must not be confused with mere hardship or what a Judge may consider to be just and proper. It is not akin to the Chancellor's foot or as what a Judge may regard to be his interpretation of unjust or unfair or inequitable. ***Reliance Salt Ltd. Vs. Cosmos Enterprise and Anr. (2006) 13 SCC 599*** at paras 16 and 17, ***State Bank of India vs. Mula Sahakari Sakhan Karkhana Ltd. (2006) 6 SCC 293*** at paras 33, 34 & 42, ***Svenska Handelsbanken vs. Indian Charge Chrome and Ors. (1994) 1 SCC 502*** at paras 38 to 40, 84, and 86, ***National Highways Authority of India vs. ELSAMEX-TWS-SNC Joint Venture 2008 Supp.(1) ArbLR 559*** at para 68, ***Vinitec Electronics Private Limited vs. HCL Infosystems Limited (2008) 1 SCC 544*** at paras 25 and 27, ***BSES Ltd. (now Reliance Energy Ltd.) vs. Fenner India Ltd. and Ors. AIR 2006 SC 1148*** at para 10, ***Owen Engineering Ltd. Vs. Barclays Bank International Ltd. (1978) 1 All ER 976*** at 983 (b) & (c).

g) In ***Dwarikesh Sugar Industries Limited vs. Prem Heavy Engineering Works Limited (1976) 4 SCC 480*** at para 22, it was held that, the special consideration of irretrievable injury meant a circumstance that made it impossible for the guarantor to reimburse itself by way of restitution. In ***U.P. State Sugar Corporation vs. Sumac International Ltd.*** at para 12, it was held that, the fact that

the beneficiary was a sick company and revival was pending under the Sick Industrial Company (Special Provisions) Act, 1985 was not to be regarded as a circumstance where that the money would be irretrievably lost if the claim ultimately was awarded in favour of the contractor.

h) A person who provides a bank guarantee inter-alia gains several advantages: a) He is not required to make advance payment in case of a bank guarantee so his funds can be utilized more effectively; b) His status as a reliable partner to do commerce with increases multifold; c) He generally obtains benefits from various opportunities and is able to demand more beneficial conditions from the beneficiary; and d) He is obliged to pay a commission fee for obtaining a bank guarantee which varies from banks to financial institutions but he does not have to be immediately out of pocket for the entire amount. The parties involved in such a transaction are neither poor nor illiterate nor uneducated nor minors. They generally include, a bank or a financial institution and seasoned businessmen, whether the beneficiary or the principal debtor. The decision to provide a bank guarantee is more often than not a well considered business decision which is deliberate, intentional and conscious. There is no question of showing any sympathy or compassion to any of the parties involved in a bank guarantee case. This is purely a commercial matter. The law may appear to be harsh but there is sound rationale behind the law. The law has been settled for more than half a century and even as it stands today, there is a

restrictive approach which every Court ought to follow before interfering with the working of a bank guarantee unless there is fraud or irretrievable injury or a proved case of special equity. This is not to suggest that, there can be no injunction against a bank guarantee. The law as it is on bank guarantees permits the well-known exceptions of fraud, irretrievable injury and special equities. But, it must be that extraordinary case. Otherwise, bank guarantees ought not to be toyed with or tinkered with or interdicted in casual circumstances. ***RSPL Limited vs. Simplex Infrastructures Limited & Others AIR 2019 Cal 203*** at para 18, ***Bridge & Roof Co.(I) Ltd. Vs. SKP Buildcon Pvt. Ltd. [2017 SCC OnLine Cal 17051]***. ***State Bank of India vs. Sun Pharmaceuticals Industries Limited AIR 2019 Cal 385.***

My findings:-

12. At the outset, it is of essence to ascertain terms and conditions of the guarantee. The duty of the bank is created by this document itself. It is this document which defines the obligation of the parties. Ordinarily, the nature of the bank guarantee can only be assessed from the terms thereof. In my view, the guarantee is unconditional and unequivocal in nature and categorically mentions that the bank is obliged to pay on first demand without any demur, observation, context, recourse or protest and/or without any reference to the

contractor i.e. the petitioner. Thus the liability of the bank is absolute and categorical. Hence, I reject the contention made on behalf of the petitioner that the demand for invocation or payment must clearly state what exact monies are payable by the petitioner. I reiterate that there is nothing in the express language of the guarantee which makes it obligatory on the respondent no.1 to mention what monies are exactly payable by the petitioner. In fact, the letter of invocation dated 24 May, 2021 clearly stipulates the invoked amount to be the extent of the guarantee. This, in my view, is sufficient compliance with the terms of the guarantee. Accordingly, I do not find any merit in the contention of the petitioner that the invocation of the bank guarantee by the respondent no. 1 is bad.

13. Once it is found that the bank guarantee is unconditional and irrevocable, it is not open to the bank or the principal debtor to raise any objection whatsoever to pay the amount under the guarantee. In my view, the respondent no.1 beneficiary in such circumstances in whose favour the guarantee is furnished cannot be prevented from the bank guarantee on the pretext that the letter of invocation must clearly state what monies are payable by the contractor. I am also of the view that it is important that whilst adjudicating on the aspect of the bank

guarantee, a Court refrains from entering into the merits of the underlying contract between the parties until and unless the terms of the guarantee so provide. I am of the view that the disputes between the beneficiary and the party at whose instance the bank guarantee has been given are immaterial and of no consequence at this stage.

14. I also do not find any merit in the contention of the petitioner that the letter of termination dated 24 May, 2021 does not make any mention of the exact monies payable by the petitioner. There is no obligation, at this stage of the proceedings, to enter into the exact quantum of damages which may be ultimately found to be due and payable by the petitioner to the respondent no.1. Similarly, the obligation of the petitioner is successfully commissioning the work and the issuance of the Commissioning Certificate are all questions which would be gone into in the arbitration proceedings and pertain to the merits of the underlying contract by and between the parties. All these issues are outside the arena of consideration of the question raised at this stage of the proceedings.
15. I also find that on the ground of irreparable injury the petitioner is not entitled to any order of injunction. It cannot be urged that the petitioner

will be left “remediless” or that money would be “irrecoverable” or that the situation would become “irretrievable” if the bank guarantee is encashed. The petitioner always has its remedy to include all its claims in the arbitration proceedings. In **BSES Limited vs. Fenner India Ltd. & Ors. (2006) 2 SCC 728 at paragraph 25**: the Hon’ble Supreme Court had held “*There is no dispute that arbitral proceedings are pending.....we see no situation of irretrievable injustice, if at the present moment the appellant is allowed to encash the bank guarantees. For justice can always be rendered to the first respondent if he succeeds before the Arbitrators*”.

16. Insofar, as the decisions cited by the petitioner are concerned, I am of the view that all of them are distinguishable to the facts and circumstances of this case. In *Hindustan Construction Co Ltd V State of Bihar & Ors (1999) 8 SCC 436 (paras 9, 13 and 14)* the bank guarantee could not be invoked by anyone except the Chief Engineer. It was in this background that, the invocation was held to be wrong and could not be held to be payable to the Executive Engineer. Accordingly, this decision is distinguishable and irrelevant to the facts and circumstances of the instant case. Significantly, the decision though most commonly cited in such matters has also been distinguished in **Pollen Dealcom Pvt. Ltd. &**

Anr. vs. Chambal Fertilizers & Chemicals Ltd. & Anr. GA no.2967 of 2019, CS No.332 of 2009 passed by a Learned Single Judge of this Hon'ble Court decided on 30 November, 2009, **Omega Shelters Pvt. Ltd. Vs. Unit Constriction Co. Pvt. Ltd** reported in **2009 SCC OnLine Cal 2117: (2009) 4 CHN 22 (DB)** at paras 21 & 22 and **Bharat Heavy Electricals Ltd. Vs. India Power Corporation (Haldia) Ltd. 2018 SCC OnLine Cal 1484** at para 29.

17. Similarly, in the unreported decision dated 23.11.2021 *M/s. KSE Electrical Pvt. Ltd. Vs. The Project Director, Bangladesh Rural Electrification Board and Anr.*, the learned Judge had on merits found that the respondent had already received 90% of the contract price. Additionally, the learned Judge also found that the respondent no.2 had taken to shadow boxing on behalf of the absentee wrongdoer. Thus, I am of the view that the facts of the instant case are clearly distinguishable and inappropriate to the aforesaid decision.

18. In the decision of *Basic Tele Services Limited Vs. Union of India 2009 SCC Online Delhi 1657*, the relevant terms of the guarantee had not been complied with. In this decision, the learned Judge held that the invocation of the bank guarantee was contrary to the terms of that

guarantee and did not satisfy the mandatory conditions of the guarantee as enumerated at paragraph 29 of the judgment. Hence, I am of the view that this decision is also distinguishable and inapposite to the facts of this case.

19. There is no quarrel with the proposition laid down in the decisions reported in ***Gangotri Enterprises Ltd. vs. Union of India & Ors. (2016) 11 SCC 720*** and ***Kailash Nath Associates vs. Delhi Development Authority & Anr. (2015) 4 SCC 136***. Both these cases support the proposition that there cannot be any unilateral determination or realization of penalty or damages by a party to a contract without any adjudication. I am of the view that the said decision is distinguishable on facts. The proposition of law enumerated in the said decisions deals with breaches of the main or underlying or matrix contract between the parties. For the reasons aforementioned, these issues have no relevance whatsoever at this stage of proceeding.
20. Accordingly, I find no merit in this application. There are no grounds whatsoever to pass any order of restraint insofar as the guarantee is concerned. In view of the aforesaid, AP 242/2021 stands dismissed.

Consequently, the interim order dated 21.06.2021 is automatically vacated.

(Ravi Krishan Kapur, J.)

LATER

The Court: After pronouncement of this judgment, Mr. Jishnu Saha, Senior Advocate prays for stay operation of this judgment. The prayer for stay is considered and rejected.

(Ravi Krishan Kapur, J.)