

OCD 15

ORDER SHEET
AP-COM/621/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

INDRA SISTEMAS SA
VS
KOLKATA METRO RAIL CORPORATION LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 12th August, 2025.

Appearance:
Mr. Anirban Ray, Sr. Adv.
Mr. Dwaipayan Basu Mallick, Adv.
Mr. Prashant Pakkidey, Adv.
Mr. Manav Gill, Adv.
Mr. Subhankar Das, Adv.
...for the petitioner

Mr. Jishnu Chowdhury, Sr. Adv.
Ms. Sreya Basu Mallick, Adv.
Mr. Aritra Basu, Adv.
Mr. Ankit Dey, Adv.
Mr. A. Mandal, Adv.
...for the KMRCL

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act'). The petitioner prays for interim protection and injunction. The prayers are quoted below:

“(a) That pending the hearing and final disposal of the arbitration proceedings, the Respondent be restrained from making any recoveries towards the cost of the alleged BCC procured by it from

third parties from the payments due to the Petitioner under the Contract or otherwise, in furtherance to its letter dated 28th March, 2025 or otherwise;

- (b) That pending the hearing and final disposal of the arbitration proceedings, the Respondent be restrained from the invocation and/or encashment of the 2(two) bank guarantees bearing no's 0999614FG0001387 (new no. 1731314FG1001387) and 1731321FG0000837 issued by the State Bank of India;
- (c) That pending the hearing and final disposal of the arbitration proceedings, the Respondent be directed to deposit with the registry of this Hon'ble Court the sum of Rs.29,15,742/- deducted by it from the payments due to Indra towards the cost of the BCC alleged to be procured by it from third parties;
- (d) Ex-parte ad-interim and interim orders in terms of the prayers above;
- (e) Costs to be paid by the respondent;
- (f) Such further orders or directions be passed as this Hon'ble Court may deem fit and proper."

2. The petitioner apprehends that the respondent will invoke the bank guarantee which was furnished by the petitioner in the course of business arising out of contract for work of design, manufacture, supply, installation, testing and commissioning of Automatic Fare Collection system (in short the AFC system project). The letter of acceptance was issued to the petitioner by the respondent on January 8, 2014 and a contract was entered into on September 10, 2014. The contract was also amended by the parties in respect of the deliverables of the software by a

supplementary agreement dated February 13, 2019. The work was divided into two phases, Phase-I and Phase-II. Phase-I comprised of the design for depot, six elevated stations and two underground stations. The original date of completion of Phase-I was August 30, 2016. Phase-II comprised of four underground stations with BCC (Backup Control Centre). The original completion date for the work of Phase-II was August 9, 2017. A General Consultant (GC) being a consortium of five companies was engaged by the respondent to manage the project. The petitioner furnished a Performance Bank Guarantee (PBG) for a sum of Rs.2,25,02,742/-. Multiple extensions were granted by the respondent and the petitioner contends to have completed the work within the extended period. In the course of execution of the Phase-II, disputes and differences cropped up.

3. According to the petitioner, the dispute arose out of the BCC which was to be provided for Phase-II. Reliance has been placed on Appendix-2.1 of the contract which contains the particulars and specifications of the deliverables under BCC. The BCC was the backup operating system to support the Operations Control Centre (OCC). After multiple rounds of discussions, the petitioner made the final proposal for the BCC. Several queries were raised by the GC, which the petitioner claims to have been sufficiently clarified and explained. On October 13, 2023, the proposal for the BCC was approved by the respondent as well as by the. Accordingly, the petitioner proceeded to finalize the detailed design and requirement as per the approved BCC. Thereafter, the Centre for Railway Information

Systems (CRIS) made certain observations. The petitioner informed the CRIS that the approved BCC complied with the contractual requirements and if any additional design or backup equipments were to be provided, the same would require a variation order. Accordingly, the petitioner put on hold the procurement of BCC equipments, until a final confirmation was received from the respondent with regard to the petitioner's claim for a variation order.

4. The petitioner submitted the variation proposal. The GC, by a letter dated October 30, 2024, informed the petitioner that due to failure on the part of the petitioner to supply the approved BCC in accordance with the requirements of Appendix 2.1 of the contract, the respondent had decided to procure the same from an outside agency at the risk and cost of the petitioner. The letter stated that the work of procurement of the BCC equipment along with related software were de-scoped from the petitioner's contract. That was the starting point of the dispute.
5. Mr. Anirban Ray, learned senior advocate for the petitioner submits that a contract of 2014, under no circumstances, could have required the same nature of design and the BCC equipment that was being demanded by the respondent. With the change in technology, the requirement had enhanced and the respondent was actually asking the petitioner to provide design and drawing as also BCC equipments of a superior quality. This was not in conformity with the contract of 2014. Under such circumstances, the petitioner was justified in asking for the variation order as the bid of the

petitioner did not factor in the expenses that would be incurred, to provide the BCC, having regard to the nature and specifications specified by the respondent at a later stage.

6. Moreover, the proposal of the BCC was approved by the respondent and the respondent could not turn around from the said approval by contending that, the approval was on a preliminary basis and was subject to procurement of the equipments by the petitioner. The requirement to provide design and equipments with improved and modern technology, was in breach of the contract.
7. Mr. Ray submits that the respondent unilaterally started deducting the costs of the equipments procured from a third party, from the R/A bills of the petitioner. That was the second violation and breach of the contract. Mr. Ray submits that the petitioner has a strong, prima facie, case for protection against any further coercive action that the respondent might take, to cover their alleged expenses. Appendix-2.1 has been placed in great detail to show that the number of equipments required were limited and the petitioner had undertaken to provide those. The petitioner was obliged only to provide the design and BCC equipments, strictly in conformity with Appendix 2.1.
8. Mr. Ray alleges that although several meetings were held between the parties, the matter remained unresolved and the respondent continued to deduct the amount from the R/A Bills. According to the calculation provided by the respondent, a sum of Rs.2,11,64,590.84 was still due and

payable, out of the expenses incurred by the respondent for procurement of equipments in relation to the AFC System Contract. It is apprehended that at any moment the bank guarantee may be invoked. The only other route for recovery of the alleged amount due, would be by invoking the PBG. The retention money was also withheld.

9. Reliance has been placed on an order of this Court in ***Gallant Equipment Private Limited Versus Rashmi Metaliks Ltd***, passed in ***AP-COM/277/2025***, in support of the contention that this Court had held that if a strong, prima facie case was made out, the party invoking the bank guarantee could be directed to deposit the amount with the Court or secure the amount in some form or another. Reliance has also been placed in the matter of ***Essar House Private Limited versus Arcellor Mittal Nippon Steel India Limited*** reported in ***(2022) 20 SCC 178***, in support of the prayer for interim injunction.
10. Reference was made to various letters exchanged between the parties in support of the contention that the petitioner had fulfilled its obligation under the contract, but the respondent had not only changed the terms and conditions of the contract by rewriting the same, but has extracted money from the petitioner from its legitimate dues. By a letter dated July 6, 2023, the petitioner was asked to clarify the proposals. By letter dated July 20, 2023, the petitioner gave the clarifications and pointed out discrepancies. The issues were all sorted out and on 13th October, 2023, the design was approved. The approval, as it stood, was full and final

acceptance of the design provided by the petitioner in respect of the BCC under Phase-II. According to Mr. Ray, the facts that the approval had been accorded and all the clarifications had been accepted without any further query, would indicate that the subsequent claim of the respondent and the act of deduction were nothing, but a pressure tactic to recover money unjustly from the petitioner. This caused unjust enrichment to the respondent. The final approval came from the respondent on October 13, 2023, but the respondent changed its demands thereafter.

11. Under such circumstances, Mr. Ray submits that a strong, prima facie case, has been made out. The approval of October 13, 2023 was an unconditional acceptance of the design of the petitioner. Although, the estimated value of the contract for the BCC was approximately Rs.1.5 crores, the equipments were procured for more than Rs.3.90 crores from outside, and illegally deducted from the petitioner's bills.
12. Mr. Jishnu Chowdhury, learned Senior Advocate for the respondent submits that the contract was a Design Build Contract. It was not an item rate contract or a BOQ Contract. The nature of the contract was such that, the petitioner was to provide the entire drawing and design of the AFC system project and the petitioner failed to do so. When the petitioner failed to provide the equipments necessary for the BCC as per the requirement under the contract read with the supplementary agreement, the respondent had to procure the same from outside. Page 1127 of the application has been relied upon in support of the contention that the proposal of the BCC

which was submitted by the petitioner, was approved with conditions. The approval was subject to compliances. The conditions which were put forward to the petitioner by the said letter were as follows:

- “ i) The functionalities of BCC should be same as OCC as confirmed by M/s. Indra’s letter under reference (15)i.e.; KMRC/AFC/1248-23_124 Dated 05.10.2023.
- ii) There should not be any interruption of service at BCC in case of failure at OCC.
- iii) Web server and other items as indicated at Appendix 2.1 (revised) of the Contract, are to be delivered for BCC.
- iv) Functional requirements of Central Computer (CC) as specified in Clause 4.2 of Volume 4 are to be complied for BCC.
- v) All required licences for AFC systems are to be provided as per Clause 2.3.2(o) of Volume 4.
- vi) Data Storage capacity at BCC should be complied as per the requirements of Clause 4.2.8 of Volume 4.
- vii) Functional requirements as defined in the contract are to be complied.”

13. By letters dated December 26, 2023, June 12, 2024 and September 3, 2024, the petitioner contended that the meetings were held with the technical team of CRIS, for review of various technical aspects. Some additional works were required and the same should be channelized through a variation order. Accordingly, the petitioner put on hold the procurement of the BCC equipments until the respondent agreed to issue a

variation order. Similar contentions were raised in the subsequent letters and according to the petitioner's estimate, Rs.5,73,91,000/- would be the additional cost. Accordingly, by the letter dated September 3, 2024, the petitioner requested the respondent to either approve the financial variation proposal that was submitted earlier or allow the petitioner to deliver the BCC as approved earlier without the additional equipments and systems. By a letter dated October 30, 2024, the respondent informed the petitioner that the respondent had decided to procure the BCC equipment from an outside agency, by de-scoping the BCC equipment and the related software, from the AFC contract. Thereafter, the parties negotiated and had several meetings, but the dispute remained unresolved.

14. Heard the parties. It appears that there is a live dispute with regard to the execution of the Phase-2 of the contract. Requirement of further BCC equipments by the respondent, denial of the petitioner to provide such BCC equipment without a variation order, allegation of such requirement being beyond the scope of the contract and the claim for a variation order, are some of the major disputes. The disputes aggravated with the deduction of the costs incurred by the respondent in procuring the BCC equipments from a third party, from the RA Bills of the petitioner. The disputes are factual. The allegations of the petitioner and the action of the respondent in deducting the bills of the petitioner, are to be decided by weighing evidence and by interpreting the contract. The question, therefore, before this Court

is whether an order of interim injunction should be passed at this stage, on the prayers made by the petitioner.

15. By the letter dated October 30, 2024, the respondent informed the petitioner that the requirement for the BCC equipment and the related software, were being de-scoped from the contract. Thus, the respondent always understood that the said requirements were a part of the original contract. The respondent also informed the petitioner that the equipments would be procured from a third party agency and the payment to the said third party would be recovered from the petitioner. On and from October 30, 2024, the petitioner was well aware of the stand of the respondent. Even thereafter, the parties negotiated and the petitioner raised queries and tried to clarify its position. Although the petitioner contradicted the allegation of the respondent that, the petitioner failed to comply with the terms of the contract, it does not appear to this Court that the petitioner had taken any other step, by seeking any order against such deduction. The act of de-scoping, indicates that, the respondent always treated the procurement of the BCC equipments and the related software, as a contractual obligation of the petitioner. RA Bills were raised and sums were deducted from the RA Bills, on a regular basis even after October 30, 2024. The petitioner did not seek recourse to law, but continued to negotiate. The deductions continued up to June, 2025. It is at this juncture, when all the RA Bills had been paid after deduction that, the petitioner feels threatened that the PBG will be invoked. The law is well-

settled that, there cannot be an injunction against invocation of a bank guarantee unless equity demands, or the bank guarantee is a product of fraud. Relevant decisions relied on are ***North Eastern Electric Power Corporation Ltd. v. Patel Unity Joint Venture and Ors.*** reported in ***AIR 2022 Meghalaya 30*** and ***Standard Chartered Bank v. Heavy Engineering Corporation Ltd. and Anr.*** reported in ***(2020) 13 SCC 574***.

16. In the matter of ***Standard Chartered Bank (supra)***, the relevant portion is quoted below:-

“19. The law relating to invocation of bank guarantees with the consistent line of precedents of this Court is well settled and a three-Judge Bench of this Court in *Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.* [*Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.*, (1996) 5 SCC 450] held thus: (SCC p. 454, paras 4-5)

“4. It is settled law that bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary. Unless fraud or special equity exists, is pleaded and prima facie established by strong evidence as a triable issue, the beneficiary cannot be restrained from encashing the bank guarantee even if dispute between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in performance of the contract or execution of the works undertaken in furtherance thereof. The bank unconditionally and irrevocably promised to pay, on demand, the amount of liability undertaken in the guarantee without any demur or dispute in terms of the bank guarantee. The object behind is to inculcate respect for free flow of commerce and trade and faith in the commercial banking transactions unhedged by pending disputes between the beneficiary and the contractor.

5. ... The court exercising its power cannot interfere with enforcement of bank guarantee/letters of credit except only in cases where fraud or special equity is prima facie made out in the case as triable issue by strong evidence so as to prevent irretrievable injustice to the parties.”

(emphasis supplied)

20. A bank guarantee constitutes an independent contract. In *Hindustan Construction Co. Ltd. v. State of Bihar* [*Hindustan*

Construction Co. Ltd. v. State of Bihar, (1999) 8 SCC 436] , a two-Judge Bench of this Court formulated the condition upon which the invocation of the bank guarantee depends in the following terms: (SCC p. 442, para 9)

“9. 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.”

21. The same principle was followed in SBI v. Mula Sahakari Sakhar Karkhana Ltd. [SBI v. Mula Sahakari Sakhar Karkhana Ltd., (2006) 6 SCC 293] wherein a two-Judge Bench held thus: (SCC p. 301, paras 33-34)

“33. It is beyond any cavil that a bank guarantee must be construed on its own terms. It is considered to be a separate transaction.

34. If a construction, as was suggested by Mr Naphade, is to be accepted, it would also be open to a banker to put forward a case that absolute and unequivocal bank guarantee should be read as a conditional one having regard to circumstances attending thereto. It is, to our mind, impermissible in law.”

22. Taking note of the exposition of law on the subject in Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. [Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co., (2007) 8 SCC 110] , a two-Judge Bench of this Court in Gujarat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd. [Gujarat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd., (2016) 10 SCC 46 : (2017) 1 SCC (Civ) 458] has laid down the principles for grant or refusal for invocation of bank guarantee or a letter of credit. The relevant paragraph is as under: (Himadri Chemicals Industries Ltd. case [Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co., (2007) 8 SCC 110] , SCC pp. 117-18, para 14)

“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:

(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 realise

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 realisation 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.”

23. The settled position in law that emerges from the precedents of this Court is that the bank guarantee is an independent contract between bank and the beneficiary and 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 is of no consequence. There are, however, exceptions to this rule when there is a clear case of fraud, irretrievable injustice or special equities. The Court ordinarily should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee.”

17. In the decision of ***North Eastern Electric Power*** (supra), the Meghalaya High Court held as follows:-

“**20.** There is no doubt that the case carried by the respondent to the Commercial Court may not have been appropriately assessed. However, the respondent has not proffered any appeal from the impugned orders. Further, the grounds urged by the respondent here and the grounds indicated in the petition under Section 9 of the said Act, even if accepted at face value, would not constitute grounds for interfering with an unconditional bank guarantee. In short, the best arguable case of the respondent does not entitle the respondent to an injunction or any form of interdiction in respect of the subject unconditional bank guarantees.

21. The orders impugned amount to the Commercial Court rewriting the conditions of the bank guarantees or the contract between the parties, which the Court had no jurisdiction to do. If an unconditional bank

guarantee permits the beneficiary to receive the payment thereunder on its first demand and without any reference to or concurrence of the person at whose behest the guarantee had been furnished, the Court cannot introduce clauses to make the invocation conditional. Indeed, the directions issued amount to the conversion of an unconditional bank guarantee into a conditional one, which the Court plainly lacks the authority to do.

22. The arguments of fait accompli that the appellate court has been presented with by the respondent are of no relevance. Merely because no claim has been made or there is no attempt at invocation of the bank guarantees since the making of the impugned orders, it does not follow that the orders have to be continued. The contention in such regard is akin to an injunction being issued in respect of a residential property in favour of a stranger merely because the owner of the house does not intend to sell the house. When an injunction is sought against a bank guarantee or a letter of credit or the like, serious considerations should go into the adjudication; and only in the rare case may an injunction issue. There is no doubt that there is an element of prejudice that the respondent has suffered or is likely to suffer; but that is not a ground for an unconditional bank guarantee to be interdicted or interfered with. There is no case of fraud at the inception that has been made out. The only case run by the respondent is that large sums of money due to it from the appellant remain unpaid and, as such, it would be inequitable for the appellant to be left free to invoke the bank guarantees. Even if it is so, it is a completely irrelevant consideration in the matter of assessing whether the nature of order sought in respect of the bank guarantees ought to be passed.

23. For the aforesaid reasons, the judgments and orders dated June 21, 2019 are found to be without basis and completely flawed. No reason is indicated therein to interfere with the invocation or encashment or payment under any of the unconditional bank guarantees. The Commercial Court, clearly, failed to take relevant considerations into account and apply the law in such regard that it was obliged to.”

18. In the decision of this Court in ***AP-COM/277/2025 (Gallant Equipment Pvt. Ltd. v. Rashmi Metaliks Ltd.)*** (decided on 16th April 2025), the factual background was discussed in detail and the Court had come to a specific finding that it would be equitable to pass an order directing the respondent therein to secure the amount, in the event the bank guarantee

was invoked. Such finding was based on the fact that, the respondent had failed to take delivery of the goods which were approved by them. The bank guarantee was kept alive by this process. The clauses of the contract provided that the bank guarantee would be kept alive till the goods were manufactured and ready for delivery. Under such circumstances, it was directed that in the event the bank guarantee was invoked the money should be deposited with the learned Registrar, Original Side. The important point in the said decision was that, the respondent did not inform the petitioner that there was either any defect in the goods or there was any reason for not taking delivery thereof. Deliberately, the respondent neglected to receive the goods and kept the bank guarantee alive.

19. The decision in ***Essar House Private Limited v. Arcelor Mittal Nippon Steel India Limited*** reported in **(2022) 20 SCC 178** was on the proposition that the rigors of the Code of Civil Procedure would not be applicable when the Court decides a prayer for injunction under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble Apex Court held that while technicalities of the Code of Civil Procedure, should not prevent the Court from securing the ends of justice if a strong, prima facie, case was made out and the balance of convenience was in favour of granting an interim relief. The Court should exercise such power and should not withhold the relief on the mere technicality of absence of averments incorporating grounds for attachment or security. The Hon'ble Apex Court held that there should be a strong, prima facie, case and the balance of

convenience and inconvenience should be in favour of granting such injunction. This Court finds that the proposal for de-scoping the work from the contract of the petitioner was taken on October 30, 2024, when the petitioner was adequately put on notice. The petitioner kept silent. Thereafter, parties negotiated. Minutes of the meetings, which form part of the petitioner's correspondence, clearly indicate that talks were going on over the issue, but the respondent maintained its stand and continued with the silence. The petitioner allowed the deductions from its RA Bills over a period of 6-7 months.

20. Under such circumstances, this Court does not find that a strong case has been made out for an interim injunction by which the Court should restrain the respondent from invoking the bank guarantee, or deducting any money. As has already been discussed above, the bank guarantee is a contract between the respondent and the bank and the moment a Court exercises jurisdiction by restraining enforcement of the same, the Court interferes with the contract between the respondent and the bank. Under such circumstances, this Court refuses injunction. Moreover, there is not a single document on record which would show that the respondent has threatened to invoke the PBG.
21. The petitioner shall proceed for constitution of an arbitral tribunal and interim reliefs may be claimed before the learned arbitral Tribunal. At this stage, if this Court probes deeper, it would amount to holding a mini trial, which is not the true objective behind exercise of power under Section 9 of

the said Act of 1996. All observations are, prima facie, and the learned arbitral Tribunal shall proceed in accordance with law.

22. AP-COM/621/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)