IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2025

CORAM :

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Writ Petition No.22438 of 2025

Chettinad Cement Corporation Private Limited
Rep. by its authorised Signatory
Mr.S.Hariaran
Having its registered office at
Chettinad Towers, No.603
Anna Salai, Chennai 600 006. .... Petitioner

.Vs.

1.Bank of India
Rep. by its Assistant General Manager
Nagpur Main Branch
Ground Floor, Bank of India Building
S.V.Patel Marg
Nagpur-440001.

2.M/s.D.P.Jan & Co Infrastructure Pvt., Ltd.,
Bangalore Chennai Express Way Package 3
Survey No.126/4 and 140/1, Govindvadi Village
Kanchipuram Taluk
Kanchipuram
Tamil Nadu 631502. .. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent herein to release/pay a sum of Rs.6,00,000/- (Rupees Six Crocres only) to the petitioner which is the amount of money guaranteed to be paid by the 1st respondent to the petitioner under six Bank Guarantees vide BG Nos.8700IPEBG230083, 8700IPEBG230091, 8700IPEBG230118, 8700IPEBG230132, 8700IPEBG230138 and 8700IPEBG230151 dated 12.07.2023, 01.08.2023, 25.08.2023, 18.10.2023, 02.11.2023 and 26.12.2023 respectively.

For Petitioner	:	Mr.Nithyaesh Nataraj for Mr.Vaibhav R.Venkatesh
For Respondents	:	Mr.L.Sriram for M/s. Chennai Law Associates for R1 Mr.N.Nithianandam Standing Counsel for R2

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the 1st respondent to release/pay a sum of Rs.6,00,00,000/- [Rupees Six Crores Only] to the petitioner which is the amount of money guaranteed to be paid by the 1st respondent to the petitioner under six bank guarantees.

2.The case of the petitioner is that in the course of their business, the petitioner had supplied cement to the 2nd respondent. They were engaged in business transactions right from May 2023. The 2nd respondent had executed six bank guarantees to the total tune of Rs.6,00,00,000/- and the particulars are tabulated hereunder:

S.No.	Date	BG Number	Amount Guaranteed (In Rupees)	Validity Period
1	12.07.2023	8700IPEBG230083	1,00,00,000/-	11.07.2025
2	01.08.2023	8700IPEBG230091	1,00,00,000/-	31.07.2025
3	25.09.2023	8700IPEBG230118	1,00,00,000/-	23.09.2025
4	18.10.2023	8700IPEBG230132	1,00,00,000/-	17.10.2025
5	02.11.2023	8700IPEBG230138	1,00,00,000/-	01.11.2025
6	26.12.2023	8700IPEBG230151	1,00,00,000/-	25.06.2025

3.The 2nd respondent committed default in honouring payments to the petitioner. Hence, the petitioner proceeded to invoke the bank guarantees. Initially, when the petitioner invoked the bank guarantees on 29.3.2025 and once again on 07.5.2025, the 2nd respondent undertook to discharge their payment obligation based on which the petitioner kept the invocation of bank guarantee on hold Since the 2nd respondent did not honor the undertaking, the petitioner once again approached the 1st respondent bank and requested the 1st respondent to release the sum of Rs.6,00,00,000/- covered under six bank guarantees.

4.The grievance of the petitioner is that the 1st respondent through e-mail communication dated 4.6.2025 informed the petitioner that the 2nd respondent has appointed an arbitrator and the arbitrator has passed an interim order under Section 17 of the Arbitration and Conciliation Act, 1996 and restrained the bank from invoking/encashing the bank guarantees. It is under these circumstances, the present writ petition came to be filed before this Court.

5.The 1st respondent bank has taken a stand that in the light of the communication received from the 2nd respondent to the effect that an interim order has been passed by the arbitrator, the 1st respondent will have to necessarily comply with the order and they cannot release the amount towards six bank guarantees.

6.The 2nd respondent has filed a counter affidavit. In the counter affidavit, the 2nd respondent has questioned the very maintainability of this writ petition on the ground that the petitioner has to workout the remedy before the arbitrator and the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Apart from that, the 2nd respondent has also taken a stand that they are disputing the very claim made by the petitioner and hence this dispute has now been referred to the arbitrator and if at all the petitioner has any grievance, they can only workout their remedy only before the arbitrator. Accordingly, the 2nd respondent has sought for the dismissal of this writ petition.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.There is no dispute with regard to the fact that there was a commercial transaction between the petitioner and the 2nd respondent and in the course of that transaction, the 2nd respondent had executed six bank guarantees in the 1st respondent bank to honor the payment obligations with the petitioner.

9.When the petitioner attempted to invoke the bank guarantee, it is quite evident from the e-mail that was sent by the 2nd respondent on 27.5.2025 that they promised to pay the entire balance amount in six installments starting from 31.5.2025 and ending with 10.7.2025. Apart from that, they have also expressed their inability to settle the entire amount due to the financial crisis faced by them. Therefore, in none of these e-mail messages, the 2nd respondent has raised any dispute on the amount claimed by the petitioner and the 2nd respondent was only seeking for time to settle the amount.

10. The 2nd respondent through their conduct made the petitioner believe that the amounts due and payable will be settled and therefore, the petitioner did not proceed further with the invocation of bank guarantee. However, the 2nd respondent

went back on their stand and did not honor their undertaking. Therefore, the petitioner once again invoked the bank guarantee on 02.6.2025. When this was processed by the 1st respondent bank, the 2nd respondent conveniently appointed an advocate as a sole arbitrator and on 04.06.2025, the arbitrator had passed an interim order restraining the 1st respondent bank from taking any steps towards invocation of the six bank guarantees.

11.At the outset, this Court finds that the entire process adopted by the 2nd respondent is vitiated by fraud. In the first instance, the 2nd respondent has unilaterally appointed an arbitrator. The Apex Court in the recent judgement in **Central Organisation for Railway Electrification .Vs. ECI SPIC SMO MCML (JV)** reported in **2025 1 MLJ 289** had made it abundantly clear that such unilateral appointment of arbitrators violates public policy and constitutional equality under Article 14 of the Constitution of India. Thus, the constitution Bench has read Article 14 even in commercial transactions between the parties. The sole arbitrator who was unilaterally appointed by the 2nd respondent, obviously passed an interim order in favour of the 2nd respondent to the effect that the bank guarantee should not be invoked. Such an order passed by the arbitrator must be construed as non-est in the eye of law.

12.Even insofar as invocation of bank guarantee is concerned, only in rare cases, where there is fraud or where an irreparable injury will be caused, such interim orders can be passed. Useful reference can be made to the judgement of the Apex Court in **Mahatma Gandhi Sahakra Sakkare .vs. National Heavy Engg. Coop. Ltd. And Anr.** reported in 2007 5 MLJ 1280.

13.On carefully reading the so called interim order passed by the arbitrator, there is not even a discussion as to the fraud or irreparable injury that will be caused to the 2nd respondent if the bank guarantees are invoked. This is yet another reason as to why this Court is holding that the very appointment of the sole arbitrator by the 2nd respondent was with the only intention to hoodwink the petitioner and deprive them of the amount that is due and payable to them.

14.It is also evident from the e-mail communication of the 2nd respondent dated 27.5.2025 that they never disputed the amount that is payable to the petitioner. This Court can understand if the 2nd respondent had disputed the claim made by the petitioner and had sent a mail to that effect earlier. However, the only ground that was taken by the 2nd respondent was that they are facing financial crisis and therefore they will not be in a position to pay the entire amount in one go and therefore they requested for payment in installments starting from 31.5.2025 to 10.07.2025. This only means that the 2nd respondent had admitted to the liability and in such a scenario, this Court is not able to comprehend as to what dispute the arbitrator will decide in this case. The so called dispute raised by the 2nd respondent has to be rejected solely on the ground that the 2nd respondent has already admitted their liability categorically while sending the e-mail communication dated 27.5.2025.

15.In the light of the above discussion, this Court holds that the procedure adopted by the 2nd respondent by unilaterally appointing a sole arbitrator and securing an interim order, is nothing but a fraud played against the petitioner. It is now too well settled that fraud vitiates even the most solemn proceedings and in order to prevent such an abuse of process of law by playing fraud, this Court can certainly invoke its jurisdiction under Article 226 of the Constitution of India. An order obtained through fraud has to be construed as non-est in the eye of law and therefore, the 1st respondent is not bound by the so called interim order that was passed by the sole arbitrator.

16.The upshot of the above discussion, leads to the only conclusion that this writ petition has to be allowed and there shall be a direction to the 1st respondent bank to release the sum of Rs.6,00,00,000/- to the petitioner covered under six bank guarantees within a period of 36 hours from today.

17.In the result, this writ petition is allowed with the above directions. No costs.

30.07.2025

Index : Yes/No
NCS : Yes/No
KP
Note: Issue order copy on **04.08.2025**

To

1.Bank of India
Rep. by its Assistant General Manager
Nagpur Main Branch
Ground Floor, Bank of India Building
S.V.Patel Marg, Nagpur-440001.

2.M/s.D.P.Jan & Co Infrastructure Pvt., Ltd.,
Bangalore Chennai Express Way Package 3
Survey No.126/4 and 140/1, Govindvadi Village
Kanchipuram Taluk, Kanchipuram
Tamil Nadu 631502.

N.ANAND VENKATESH, J.

KP

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