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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 303/2025 & I.A. 18579/2025, I.A. 18580/2025
I.A. 19952/2025
GE POWER INDIA LIMITED

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Ajay Bhargava, Ms. Phalguni Nigam, Mr.
Triyambak, Ms. Vaishnavi, Mr. Abhishek P.,
Adv.

versus

JAIPRAKASH POWER VENTURES LIMITED & ANR.

.....Respondent

Through: Mr. Anupam Lal Das, Sr Adv, Mr.
Pawan R Upadhyay, Mr. Varun Sharma, Mr.
Rishab Khare, Mr. Anmol Wadhwa, Mr. Piyush
Gupta , Ms. Aditi Anup, Advocates

+ O.M.P.(I) (COMM.) 304/2025 & I.A. 18637/2025, I.A. 18638/2025,
I.A. 19951/2025
GE POWER INDIA LIMITED

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Ajay Bhargava, Ms. Phalguni Nigam, Mr.
Triyambak, Ms. Vaishnavi, Mr. Abhishek P.,
Adv.

versus

JAIPRAKASH POWER VENTURES LIMITED & ANR.

.....Respondent

Through: Mr. Anupam Lal Das, Sr Adv, Mr.
Pawan R Upadhyay, Mr. Varun Sharma, Mr.
Rishab Khare, Mr. Anmol Wadhwa, Mr. Piyush
Gupta , Ms. Aditi Anup, Advocates

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.08.2025

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1. The present petitions are filed under Section 9 of the Arbitration and Conciliation Act, 1996, (***“the Act”***) seeking an injunction restraining the respondent No. 1 from invoking or encashing the Advance Bank Guarantees furnished by the petitioner.
2. These two connected petitions concern six bank guarantees issued in relation to two distinct projects, namely the Nigrie and Bina projects located in Madhya Pradesh.
3. Out of the total six Bank Guarantees, the petitioner furnished four Advance Bank Guarantees and two Performance Bank Guarantees. The Advance Bank Guarantees comprise two guarantees of INR 24.525 crores each, and two guarantees of INR 14.22 crores each, particulars whereof are as follows:
 - (i) Advance Bank Guarantee No. 796BGG2400702 dated 26.03.2024 issued by the Deutsche Bank AG for a sum of Rs. 24,52,50,000/- having a validity till 05.03.2026.
 - (ii) Advance Bank Guarantee No. 796BGG2401144 dated 15.04.2024 issued by the Deutsche Bank AG for a sum of Rs. 24,52,50,000/- having validity till 05.03.2027.
 - (iii) Advance Bank Guarantee No. 796BGG2400700 dated 26.03.2024 issued by the Deutsche Bank AG for a sum of Rs. 14,22,00,000 having validity till 05.12.2026.
 - (iv) Bank Guarantee No. 796BGG2401145 dated 15.04.2024 issued by the Deutsche Bank AG for a sum of Rs. 14,22,00,000/- having validity till 05.12.2026.
4. Mr. Sethi, learned senior counsel for the petitioner, on instructions,



states that the amount equivalent to 4 bank guarantees i.e., totalling to Rs. 77,49,00,000/- shall be deposited with the respondent No. 1 within 7 days from today in the form of the Demand Draft (“**DD**”).

5. On receipt of the DD, the unencashed original Advance Bank Guarantees mentioned above shall be returned to the petitioner/its nominee.
6. The issue now revolves around the Performance Bank Guarantee No. 796BGG2400703 dated 26.03.2024 issued by the Deutsche Bank AG for a sum of INR 24,52,50,000 having validity till 05.09.2028 and Performance Bank Guarantee No. 796BGG2400701 dated 26.03.2024 issued by the Deutsche Bank AG for a sum of INR 14,22,00,000 having validity till 05.06.2028.
7. Mr. Sethi, learned senior counsel for the petitioner, submits that the correspondence exchanged between the parties clearly demonstrates that the very purpose of the Contract, namely the erection and commission of Wet Limestone Based Flue Gas Desulfurization Package for the respondent No. 1’s facility, became redundant owing to a change in Government policy. The petitioner has placed on record several communications evidencing that the respondent No. 1 itself desired foreclosure and termination of the contract in view of the said policy change. In such circumstances, once the contract stood foreclosed, the petitioner cannot be held responsible for any alleged non-performance.
8. Mr. Das, learned senior counsel for the respondent No. 1, contends that the agreement executed between the parties was a time-bound contract divided into multiple phases, with specific obligations to be completed



by the petitioner within stipulated timelines from 30.03.2024 until its foreclosure. According to him, the petitioner failed to adhere to these milestones and did not perform its obligations in accordance with the agreed schedule.

9. In these circumstances, it is argued that the respondent No. 1 are within their contractual rights to invoke and encash the Performance Bank Guarantees furnished by the petitioner. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corporation, (1996) 5 SCC 450***, to submit that non-performance of contractual obligations disentitles the petitioner to seek an injunction against encashment of bank guarantees.
10. I have heard learned senior counsels for the parties.
11. The relevant paragraphs of Performance Bank Guarantee No. 796BGG2400703 and Performance Bank Guarantee No. 796BGG2400701 dated 26.03.2024 are reproduced below:



BANK GUARANTEE NO: 796BGG2400703

DATE: 26.03.2024

PERFORMANCE SECURITY BANK GUARANTEE

To,
JAIPRAKASH POWER VENTURES LIMITED,
JA House, 63 Basant Lok, Vasant Vihar, New Delhi-110057

1. In consideration of you, **JAIPRAKASH POWER VENTURES LIMITED** having its Registered Office at Complex of Jaypee Nigrie Super Thermal Power Plant, Nigrie, Tehsil Sarai, Distt. Singrauli-486669, Madhya Pradesh, India, and Head Office at "JA House" 63, Basant Lok, Vasant Vihar, New Delhi- 110057 India (hereinafter called the "Owner", which expression shall unless repugnant to the subject or context include its administrators, successors and permitted assigns) having issued Letter of Award Ref. No. : JPVL/JNSTPP/ WLF GD-SUPPLY/2023-24/01 dated Mar. 04, 2024 for Design, Basic & Detailed Engineering (Civil, Mechanical, Electrical, Control & Instrumentation), Procurement, Manufacture, Supply, Inspection and Testing at contractor's work(s) including Type Tests charges, Packing and Forwarding, Transportation to site including transit insurance, Technical Field Advisory (TFA) Services/ Supervision during Erection & Commissioning, Commissioning, supply of Mandatory Spares and conducting Performance Guarantee (PG) Test of Wet Limestone based Flue Gas Desulphurization (WLF GD) Package (which Letter of Award is hereinafter referred to as "Contract") for 2 X 660 MW - Jaypee Nigrie Super Thermal Power Plant at Nigrie, Distt. Singrauli, Madhya Pradesh, India to GE Power India Limited, a Company organised and existing under the laws of India and having its principal place of business at Tower 5, 5th Floor, Axis House, Jaypee Wishtown, Sector - 128, Noida - 201304, Uttar Pradesh, (hereinafter referred to as "the Contractor", which expression shall unless repugnant to the subject or context or meaning thereof include its successors, administrators, executors and permitted assignees), in light of the foregoing, the Contractor having agreed to provide a guarantee equal to 5% of the Contract Sum (hereinafter referred to as "Guarantee") equivalent to an amount of INR 24,52,50,000.00 (INR Twenty four crore fifty two lakhs and fifty thousand Only), as security for the due and faithful performance of the Contract and all obligations undertaken by the Contractor under, pursuant or in relation to the Contract in the form of a Bank Guarantee, we, Deutsche Bank AG., a bank incorporated under the laws of Federal Republic Germany having its registered office at 12, Taunusanlage, Frankfurt am Main, Federal Republic of Germany and branch office at Trade services, Hindustan Times House, 14th Floor, 18-20, Kasturba Gandhi Marg, New Delhi 110001 (hereinafter referred to as the "Bank", which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assign) do hereby unconditionally and irrevocably guarantee and undertake to indemnify and keep indemnified the Owner to the extent of INR 24,52,50,000.00 (INR Twenty four crore fifty two lakhs and fifty thousand Only). The Bank undertakes unconditionally to pay the amount claimed by the Owner on receipt of its mere written demand and without any demur, reservations, recourse, contest or protest and without any reference to the Contractor.

2. We unconditionally and irrevocably guarantee and undertake to indemnify you and keep you indemnified from time to time to the extent of INR 24,52,50,000.00 (INR Twenty four crore fifty two lakhs and fifty thousand Only), We shall forthwith on receipt of your

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BANK GUARANTEE NO: 796BGG2400703





written demand and without demur reservations, recourse, contest or protest and without any reference to the Contractor, pay to you such sum or sums not exceeding in total the said sum of INR 24,52,50,000.00 (INR Twenty four crore fifty two lakhs and fifty thousand Only) as may be claimed by you by way of such Guarantee.

3. Our obligation to make payment under this Guarantee shall arise forthwith on receipt of your written demand in the form attached in Exhibit 1. We shall not be required or permitted to make any other investigation or inquiry whatsoever into the amount claimed by you or the nature of the alleged default.

4. This Guarantee shall continue and hold good and shall remain in full force and effect for a period from the date hereof upto 5th September 2028

5. Our liability to you shall not be discharged, impaired or affected by reason of:

a) any time, forbearance, forgiveness or indulgence which you may grant to the Contractor or any other person; or

b) any legal limitation, disability or incapacity or other circumstance relating to the Contractor; or

c) any amendment to, waiver or variation of any of the terms of the Contract; or

d) any alteration to the extent or nature of the works to be provided by Contractor; or

e) any defect in the obligations of the Contractor under the Contract; or

f) the liquidation, dissolution, amalgamation, reconstruction or reorganization of the Contractor or us or the appointment of a receiver, administrative receiver or administrator (or similar person in any jurisdiction) of any of assets of the Contractor or any change of control of the Contractor or the occurrence of any circumstance affecting the liability of the Contractor or any circumstance affecting our liability to discharge any obligation secured by this Guarantee; or

g) any other matter or circumstance whereby but for this provision, we would or might be discharged from liability under this Guarantee.

6. This Guarantee shall not in any way be affected by your taking or varying or giving up any securities from the Contractor or any other person, firm or company on its behalf or by the winding up, dissolution or insolvency as the case may be of the Contractor.

7. We shall be deemed a principal obligor in respect of our obligations under this Guarantee and not merely a surety. Accordingly, we shall not be discharged nor shall our liability hereunder be affected by any act or thing or means whatsoever





BANK GUARANTEE NO.: 796BGG2400701
DATE: 26.03.2024

PERFORMANCE SECURITY BANK GUARANTEE

To,
JAIPRAKASH POWER VENTURES LIMITED,
JA House, 63 Basant Lok, Vasant Vihar, New Delhi-110057

1. In consideration of your, **JAIPRAKASH POWER VENTURES LIMITED** having its Registered Office at Complex of Jaypee Nigrie Super Thermal Power Plant, Nigrie, Tehsil Sarai, Distt. Singrauli-486669, Madhya Pradesh, India and Head Office at "JA House" 63, Basant Lok, Vasant Vihar, New Delhi- 110057 India (hereinafter called the "Owner", which expression shall unless repugnant to the subject or context include its administrators, successors and permitted assigns) having issued Letter of Award Ref. No. : JPVL/JBTPP/ WLFGD-SUPPLY/2023-24/01 dated Mar. 04, 2024 for Design, Basic & Detailed Engineering (Civil, Mechanical, Electrical, Control & Instrumentation), Procurement, Manufacture, Supply, Inspection and Testing at contractor's work(s) including Type Tests charges, Packing and Forwarding, Transportation to site including transit insurance, Technical Field Advisory (TFA) Services/ Supervision during Erection & Commissioning, Commissioning, supply of Mandatory Spares and conducting Performance Guarantee (PG) Test of Wet Limestone based Flue Gas Desulphurization (WLFGD) Package (which Letter of Award is hereinafter referred to as "Contract") for 2 X 250 MW - Jaypee Bina Thermal Power Plant at Bina, Distt. Sagar, Madhya Pradesh, India to GE Power India Limited, a Company organised and existing under the laws of India and having its principal place of business at Tower 5, 5th Floor, Axis House, Jaypee Wishtown, Sector - 128, Noida - 201304, Uttar Pradesh, (hereinafter referred to as "the Contractor", which expression shall unless repugnant to the subject or context or meaning thereof include its successors, administrators, executors and permitted assignees)], in light of the foregoing, the Contractor having agreed to provide a guarantee equal to 5% of the Contract Sum] (hereinafter referred to as "Guarantee") equivalent to an amount of INR 14,22,00,000.00 (INR Fourteen crore and twenty two lakhs only) as security for the due and faithful performance of the Contract and all obligations undertaken by the Contractor under, pursuant or in relation to the Contract in the form of a Bank Guarantee, we, Deutsche Bank AG., a bank incorporated under the laws of Federal Republic Germany having its registered office at 12, Taunusanlage, Frankfurt am Main, Federal Republic of Germany and branch office at Trade services, Hindustan Times House, 14th Floor, 18-20, Kasturba Gandhi Marg, New Delhi 110001 (hereinafter referred to as the "Bank", which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assign) do hereby unconditionally and irrevocably guarantee and undertake to indemnify and keep indemnified the Owner to the extent of INR 14,22,00,000.00 (INR Fourteen crore and twenty two lakhs only) The Bank undertakes unconditionally to pay the amount claimed by the Owner on receipt of its mere written demand and without any demur, reservations, recourse, contest or protest and without any reference to the Contractor.

2. We unconditionally and irrevocably guarantee and undertake to indemnify you and keep you indemnified from time to time to the extent of INR 14,22,00,000.00 (INR Fourteen crore and twenty-two lakhs only) We shall forthwith on receipt of your written demand and without demur reservations, recourse, contest or protest and without any reference to the Contractor, pay to you such sum or sums not exceeding in total the said sum of INR 14,22,00,000.00 (INR



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Fourteen crore and twenty two lakhs only) as may be claimed by you by way of such Guarantee.

3. Our obligation to make payment under this Guarantee shall arise forthwith on receipt of your written demand in the form attached in Exhibit 1. We shall not be required or permitted to make any other investigation or inquiry whatsoever into the amount claimed by you or the nature of the alleged default.

4. This Guarantee shall continue and hold good and shall remain in full force and effect for a period from the date hereof 5th June 2028.

5. Our liability to you shall not be discharged, impaired or affected by reason of:
a) any time, forbearance, forgiveness or indulgence which you may grant to the Contractor or any other person; or
b) any legal limitation, disability or incapacity or other circumstance relating to the Contractor; or
c) any amendment to, waiver or variation of any of the terms of the Contract; or
d) any alteration to the extent or nature of the works to be provided by Contractor; or
e) any defect in the obligations of the Contractor under the Contract; or
f) the liquidation, dissolution, amalgamation, reconstruction or reorganization of the Contractor or us or the appointment of a receiver, administrative receiver or administrator (or similar person in any jurisdiction) of any of assets of the Contractor or any change of control of the Contractor or the occurrence of any circumstance affecting the liability of the Contractor or any circumstance affecting our liability to discharge any obligation secured by this Guarantee; or
g) any other matter or circumstance whereby but for this provision, we would or might be discharged from liability under this Guarantee.

6. This Guarantee shall not in any way be affected by your taking or varying or giving up any securities from the Contractor or any other person, firm or company on its behalf or by the winding up, dissolution or insolvency as the case may be of the Contractor.

7. We shall be deemed a principal obligor in respect of our obligations under this Guarantee and not merely a surety. Accordingly, we shall not be discharged nor shall our liability hereunder be affected by any act or thing or means whatsoever by which our said liability would not have been discharged if we had been a primary obligor. We hereby waive our rights of subrogation against the Contractor until your claims have been first discharged by the Contractor.

8. Subject to the maximum limit of our liability as aforesaid, this Guarantee will cover all your claim or claims against the Contractor from time to time arising out of or in relation to the said Contract and in respect of which your claim in writing is lodged on us on or before 5th June 2028

9. Any notice by way of demand or otherwise hereunder may be sent by special courier, telex or registered post to our local address as aforesaid and if sent by post, it shall be deemed to have been given when the same has been received by us .

10. This Guarantee and the powers and provisions herein contained are in addition to and not by way of limitation or substitution for any other guarantee or guarantees heretofore given to

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12. A perusal of the Performance Bank Guarantees reveals that they were furnished as security to ensure the due and faithful performance of the contract and all obligations undertaken by the petitioner under, or in relation to, the contract. Clause 3 of the guarantees further stipulates that the invocation was to be made strictly in the form annexed as Exhibit 1 to the guarantees. It is thus evident that the guarantees were meant to serve a specific and limited purpose, namely, to secure the due performance of the contractual obligations.
13. In the present case, however, owing to the change in Government policy, the very performance of the contract was no more required. The respondent No. 1, by its letter dated 19.11.2024, expressly foreclosed the contract. Whether or not the petitioner failed to adhere to the phase-wise completion schedule is a matter that falls squarely within the jurisdiction of the arbitral tribunal, to be determined on merits.
14. For the purposes of the present proceedings, it suffices to note that the performance of the Contract stood rendered impossible due to reasons not attributable to the petitioner, and the foreclosure was at the instance of the respondent No. 1. In such circumstances, invocation of the Performance Bank Guarantees would prima facie amount to unjust enrichment, particularly when the petitioner cannot be faulted for non-performance. Moreover, the invocation as attempted does not conform to the requirements of Clause 3 of the Performance Bank Guarantees.
15. For the aforesaid reasons, the petitions are allowed and the respondent No. 1 is restrained from encashing the performance bank guarantees No. 796BGG2400703 dated 26.03.2024 and Performance Bank Guarantee No. 796BGG2400701 dated 26.03.2024.



16. The parties are already in the process of initiating arbitral proceedings in terms of the arbitration clause contained in Clause 24 of the Contract Agreement.
17. It is clarified that the respondent No. 1 shall be at liberty to move an application before the learned arbitral tribunal seeking vacation or modification of this order. Such an application, if made, shall be considered by the Arbitral Tribunal as and when constituted, and the tribunal shall remain uninfluenced by the prima facie observations made in this order, which are confined only to the limited purpose of adjudicating the present petitions under Section 9 of the Act.
18. The petitions are disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 21, 2025 / (MS)