

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 7814 of 2026

M/s. Nirman Constructions & Anr.

Versus

The Union of India and Others

Mr. Sayan Chattopadhyay

Ms. Suprava Jana

Ms. Sushama Hansda

.....For the petitioners.

Mr. Sauvik Nandy, Sr. Adv.

Mr. Dyutimoy Paul

.....For the respondent nos. 2 & 3.

Hearing Concluded On : 31.03.2026

Judgment on : 02.04.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition praying for a direction restraining the respondent no. 2 from encashing the Bank Guarantee dated 2nd February, 2023 for an amount of Rs. 7,16,346/-.

- 2.** The respondents have issued Letter of Acceptance to the petitioners on 7th December, 2022 for modification/rebuilding of houses including plastering of walls, painting, tiling works in toilets and kitchen in Category-3 and above houses in DSP Township. In terms of the Letter of Acceptance, the respondents have issued the work order to the petitioners on 15th December, 2022. As per the terms and conditions of the contract, the petitioners have to submit Performance Security Deposit of 3% of total order value. The petitioners have submitted Performance Security Deposit for a sum of Rs. 7,16,346/- being Performance Bank Guarantee No. 03041LG000723 dated 2nd February, 2023.
- 3.** On completion of work awarded to the petitioners, the General Manager (Projects) SAIL/DSP had issued completion certificate to the petitioners on 2nd May, 2024 wherein it is mentioned that the date of completion is 31st December, 2023. In the said completion certificate, it is also mentioned that *“the said letter does relieve the petitioners from its obligation to complete the execution of the Facilities in accordance with the Contract nor the obligations of the petitioners during the Defects Liability Period”*.
- 4.** On 4th January, 2024, the petitioners raised final bill and 20th January, 2024, payment was released in favour of the petitioners with respect to the final bill raised by the petitioners. On 10th May, 2024, the petitioners have requested the respondents for release of the retention money amounting to Rs. 20,22,950/- being the 10% of the bill amount

but inspite of the request made by the petitioners, the retention amount has not been released. Instead, on 23rd March, 2026, the respondents requested the Punjab National Bank to encash the Bank Guarantee of the petitioners and to remit the amount in full to the respondents within 7 days from the date of receipt of the letter dated 23rd March, 2026.

5. Mr. Sayan Chattopadhyay, Learned Advocate representing the petitioners submits that as per the tender notice issued by the respondent authorities, the petitioners have participated in the said tender and accordingly work order was issued to the petitioners. He submits that as per the satisfaction of the respondents, the petitioners have executed and completed the work and raised final bill and the respondent authorities have released the final bill amount. He submits that as per the terms and conditions of the tender document, the petitioners have submitted the security deposit of Rs.7,16,346/- on 2nd February, 2023 with the Punjab National Bank. He submits that after being satisfied with the work executed by the petitioners, the respondent authorities have issued completion certificate on 2nd May, 2024.
6. Mr. Chattopadhyay submits that as per the terms and conditions of the tender documents, the guarantee period of the work executed by the petitioners is for one year from the date of handing over of the work for any defect due to bad workmanship or poor performance or partial or total breakdown of the work as a whole. He submits that the work was

completed on 31st December, 2023 and thereafter no complaint has been made with respect to the work executed by the petitioners and one year has completed on 31st December, 2024.

7. Mr. Chattopadhyay submits that though there was no defect or complaint within a period of one year but even after the respondents have not released the performance guarantee and retention amount. On the other hand, the respondent authorities without any notice to the petitioners requested the bank on 23rd March, 2026 for revocation of Bank Guarantee and remittance of the amount in the account of the respondent authorities.
8. Mr. Sauvik Nandy, Learned Senior Advocate representing the respondents raised the question of maintainability and submits that the writ petition is not maintainable as the petitioners have filed the present writ petition by suppressing the fact and it is settled law that in terms of the Bank Guarantee, the beneficiary is entitled to invoke the Bank Guarantee and seek encashment of the amount specified in the Bank Guarantee.
9. Mr. Nandy submits that the completion certificate relied by the petitioners is revoked by the respondents by an email dated 15th May, 2024. He submits that on 29th September, 2025, the respondent authorities have sent an email to the petitioners by enclosing the final measurement sheet of the work executed by the petitioners and requested the petitioners to submit comments or observation by 4th

October, 2025 to the Project Department but the petitioners have not furnished any comments to the same till date.

10. Mr. Nandy has relied upon the measurement sheets and submits that the total contract value excluding GST is Rs. 2,02,35,722.45. As per the measurement, the petitioners have executed the work to the tune of Rs. 1,71,86,128/- excluding GST. But the authorities have paid an amount of Rs. 2,02,29,511.94 excluding GST. He submits that an amount of Rs. 30,43,383.94 excluding GST is recoverable from the petitioners. He further submits that the total GST is of Rs. 5,47,809/- is also recoverable from the petitioners. The total recoverable amount along with GST is Rs. 35,91,192.94 out of which an amount of Rs. 20,22,950/- is the retention amount from the bill are lying with the respondents. He further submits that if the retention amount of Rs. 20,22,950/- along with Bank Guarantee of Rs. 7,16,346/- is deducted from the total recoverable amount with GST, the net recoverable amount would be Rs. 8,51,896.94.
11. Mr. Nandy submits that completion certificate which the petitioners are relying upon is not the final acceptance certificate. He submits that in the certificate, it is categorically mentioned that the said certificate does not relieve the petitioners from this obligation to complete the execution and the Defects Liability Period. He has relied upon the judgment in the case of **Ansal Engineering Projects Limited vs. Tehri Hydro Development Corporation Limited & Anr.** reported in **(1996) 5 SCC 450** and submits that the 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. He submits that unless and until fraud and special equity exists, though the Court cannot interfere with the Bank Guarantee. The respondents have further relied upon the judgment in the case of ***Standard Chartered Bank vs. Heavy Engineering Corporation Limited & Anr.*** reported in ***(2020) 13 SCC 574*** and submits that the Bank Guarantee is an independent contract between the bank and the beneficiary and the bank is always obliged to honor its guarantee as long as it is unconditional and irrecoverable.

12. Mr. Nandy further submits that the petitioners are an habitual defaulters and the authorities have already blacklisted the petitioners for a period of three years.
13. Heard the Learned Counsel for the respective parties, perused the materials on record. The petitioners have challenged the action of the respondent authorities for invocation of the guarantee submitted by the petitioners in terms of the work order dated 15th December, 2022. As per the work order dated 15th December, 2022, the petitioners have submitted Performance Bank Guarantee of Rs. 7,16,346/- with the Punjab National Bank, CBB Durgapur Branch on 2nd February, 2023 being Bank Guarantee No. 03041ILG000723 being the 3% of the total order value. As per Clause 9 of the tender document, the Performance

Security Deposit shall be kept valid till the end of the defect liability period.

- 14.** As per Clause 5 of the tender condition, the Security Deposit shall remain at the disposal of the company as security for the satisfactory execution and completion of the work in accordance with the conditions of the contract. The company shall be at the liberty to deduct and appropriate from the Security Deposit such penalties and dues as may be payable by the contractor under the contract. It is also provided that on due satisfactory performance and completion of contract in all respect, the Security Deposit will be returned without any interest thereon to the contractor. The company shall also have full right to forfeit and appropriate the Security Deposit on breach or any of the Terms and Conditions of the contract without prejudice to the rights of the company.
- 15.** The GM (Projects) had issued completion certificate on 2nd May, 2024 certifying that the work is completed on 31st December, 2023. It is also certified that the petitioners have completed the work in accordance with the terms and conditions of the contract and the employer takes over the said parts of the facilities, together with the responsibility for care and custody and the risk of loss thereof but without prejudice to any of the rights of the employer. In the said certificate, it is also mentioned that the certificate does not relieve the petitioners of his obligation to complete the execution of the facilities in accordance with the contract during the Defects Liability Period. Though the completion

certificate was issued on 2nd May, 2024 but as per the email dated 15th May, 2024, the said certificate was withdrawn. In the said email, there is no mentioning why the completion certificate has been withdrawn. After withdrawal of the said certificate, the respondents have not made any communications with the petitioners with regard to any defects of the work executed by the petitioners. It is also not the case of the respondents that the petitioners have not completed the work. On the other hand, the respondents have released the final bill raised by the petitioners and admitted that the petitioners have completed the work.

16. The respondents have relied upon the email dated 29th September, 2025 wherein the respondents have forwarded a measurement sheet to the petitioners requesting the petitioners to submit his comments. In the said communication also there is no dispute raised by the respondents that the petitioners have not completed the work or the work completed by the petitioners is defective. The petitioners have completed the work on 31st December, 2023. As per Clause 68 of the tender document, the contractor shall stand guarantee for his work at least for one year from the date of handing over the work for any defect due to bad workmanship or poor performance or partial or total breakdown of the work as a whole.

17. As per the certificate, the work was completed on 31st December, 2023 and the site was also handed over to the respondents. After 31st December, 2023, no communication is made with the petitioners with regard to any defect of the work executed by the petitioners.

- 18.** The respondents have requested the bank for invocation of the Bank Guarantee only on the ground that as per the measurement, which was supplied to the petitioners by an email dated 29th September, 2025, the respondents have made excess payment to the petitioners to that of the work executed by the petitioners. The respondents have relied upon the measurement sheet but have not disclosed how the measurement was taken. On completion of the work, the petitioners have submitted final bill and the respondents have released the final bill and have taken over the site after the execution of the work by the petitioners. The petitioners have denied with regard to the email dated 29th September, 2025 as the said email is addressed to the email address: `dgp_sbnirman@nirmanconstruction.in` but the email address of the petitioners is `dgp_sbnirman@rediffmail.com`. This Court also considered the communication made by the petitioners to the respondents to the email and finds that the email address of the petitioners is `dgp_sbnirman@rediffmail.com`.
- 19.** This Court finds that the petitioners have completed the work on 31st December, 2023 and the respondents have taken possession of the completed work of the petitioners and thereafter no communication has been made to the petitioners with regard to any defect in the work executed by the petitioners. The guarantee period was also elapsed on 31st December, 2024 but after the period of more than two years three months, the respondents are trying to invoke the Bank Guarantee instead of returning of the Bank Guarantee to the petitioners.

- 20.** The respondents have relied upon the order of blacklisting of the petitioners but the said blacklisting order is not in connection with the present work. This Court also finds that the stand taken by the respondents that the respondents have paid an excess amount to the petitioners but there is no documents to show that the respondents have issued any notice to the petitioners for recovery of the excess amount as claimed by the respondents.
- 21.** The judgments relied by the respondents are distinguishable from the facts and circumstances of the present case. This Court finds that the respondents after the period of two years three months, trying to invoke the Bank Guarantee without any justification, though there is no allegation upon the petitioners that the work executed by the petitioners is defective or has not complied with the terms and conditions of the contract.
- 22.** In view of the above, this Court finds that the act of the respondent authorities for invoking the Bank Guarantee of the petitioners is arbitrary and illegal. Accordingly, the letter dated 23rd March, 2026, issued by the respondent authorities to the Chief Manager, Punjab National Bank, CBB, Durgapur, is set aside and quashed.
- 23. WPA No. 7814 of 2026 is disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)