

23.04.2026
Item No.8
Court No.37
CHC

**In The High Court at Calcutta
Commercial Appellate Jurisdiction
Commercial Division**

**AO-COM/15/2026
IA NO: CAN/1/2026**

**Kamladityya Construction Private Limited
Vs.
Central Public Works Department**

Mr. Mainak Bose, Senior Advocate
Mr. Rishabh Karnani, Advocate
Mr. Anurag Bagaria, Advocate
...for the appellant

1. Affidavit-of-service filed in Court be taken on record.
2. None appears for the respondent despite service.
3. Certified copy of the order filed in Court be taken on record.
4. Since the impugned order was passed *ex parte* at the ad interim stage and since, the subject-matter involves invocation of a bank guarantee we deem it appropriate to take up the matter for final hearing.
5. Appeal is directed against the order No.2 dated April 21, 2026 passed in Misc.Arb(Com)-23/2026.
6. By the impugned order, learned Judge refused to grant *ex parte* ad interim order.
7. Learned Senior Advocate appearing for the appellant submits that, the appellant was granted a contract for construction of Basement + Ground Floor + 10-storied building for State of the Art, Director General, GSI

Office at Plot No. GN-40, Sector-V, Salt Lake, Kolkata including Civil, Electrical & Mechanical and Horticulture works services on EPC basis. In terms of the contract performance bank guarantee for a sum of Rs.7,89,50,500/- was issued by the appellant in favour of the respondent. He submits that, such bank guarantee is presently alive.

8. Learned Senior Advocate appearing for the appellant submits that, in terms of the contract between the parties, the respondent was responsible to discharge various obligations. One of the obligations was, a fire licence clearance which was not made available to the appellant.
9. Learned Senior Advocate appearing for the appellant refers to the show-cause notice dated January 20, 2026. He submits that, the appellant replied to such show-cause notice by a letter dated January 28, 2026. Response of the respondent is the letter dated March 12, 2026. He refers to the last paragraph of such letter and submits that, the respondent stated that, further show-cause notice would be issued if the situation so arose. He contends that, no further show-cause notice was issued. However, by a letter dated April 15, 2026, the respondent purported to determine the contract, forfeit the security deposit and the performance bank guarantee. He points out that, the appellant was

debarred from participating in the tender process for the balance contract.

10. Learned Senior Advocate appearing for the appellant submits that, the invocation of the bank guarantee was not in terms of the bank guarantee assuming though not admitting there is a valid invocation. He contends that, the letter dated April 15, 2026 cannot be construed to be an invocation of the bank guarantee.
11. It is trite law that, to obtain order of injunction of invocation of a bank guarantee, the appellant must establish fraud of egregious nature. The fraud must travel to the root of the guarantee and not merely to the breach of the underlying contract and that, such fraud must be known to the bank at the time of the invocation. Additionally, appellant must establish irreparable injury such that, recovery would be impossible at a later stage.
12. In the facts and circumstances of the present case, none of these conditions stands satisfied by the appellant on the score of invocation of the subject bank guarantee.
13. Materials placed on record suggest that, a work order was issued by the respondent to the appellant for construction of a Basement + Ground Floor + 10-Storeyed Building for State of the Art, Director General, GSI Office at Plot No.GN-40, Sector-V, Salt Lake,

Kolkata including Civil, Electrical & Mechanical and Horticulture works services on EPC basis. The work order was issued on February 27, 2020. The stipulated date for start of work was February 20, 2020. The date of completion of the work is February 21, 2023.

14. According to the appellant, since the respondent did not dispatch some of the obligations in terms of the work order, the contract could not be completed within time. According to the appellant, a substantial portion of the work stands concluded.
15. The respondent issued show-cause notice on January 20, 2026 after noting that the time for completion of the work was February 21, 2023 and that, the work was not completed as on the date of issuance of the show-cause notice. Appellant before us responded thereto by a letter dated January 28, 2026. In reply, by a letter dated March 12, 2026, the respondent stated that, the work was delayed due to the unplanned procurement and mobilization of construction material as well as equipment, deployment of insufficient manpower at site by the appellant. The reply to the show-cause notice was not accepted and was termed as not satisfactory. Appellant was directed to complete the project at the earliest. Records placed before us show that there was a subsequent writing dated March 19, 2026 by which,

the prayer for extension of time submitted by the appellant, was returned with request to re-submit the same after considering upto date hindrances. No document is placed on record to suggest that, the appellant reapplied for extension of time subsequent to the letter dated March 19, 2026.

16. The next letter in point of time disclosed before us is the letter dated April 15, 2026 issued by the respondent. By such letter, the respondent terminated the contract and proceeded to forfeit the security deposit and the performance bank guarantee.
17. The performance bank guarantee in question was unconditional. The performance bank guarantee is payable on demand.
18. The conduct of the appellant, at least at the ad interim stage does not inspire confidence in granting an *ex parte* ad interim order of injunction as prayed for.
19. So far as the prohibition on the appellant to participate in the tender is concerned, we find that, such prohibition is limited to the tender process for the balance work involved in the subject project.
20. Since, it is alleged as against the appellant the delay in completion of the project is entirely attributable to the appellant, the decision of the respondent, in prohibiting the appellant from participating in the tender for the balance work at least at *ex parte* ad interim stage cannot be said to be misplaced.

21. In such circumstances, we find no merit in the present appeal.
22. **AO(Com)-15 of 2026** along with connected application **CAN/1/2026** are **dismissed** without any order.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)