IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 288 OF 2026
IN
COMMERCIAL SUIT NO. 138 OF 2025

IRB MP Expressway Private Limited]
a company incorporated under]
Companies Act, 1956, having its]
registered office at 1101, Hiranandani]
Knowledge Park, 11th Floor,]
Technology Street, Hill Side Avenue,]
Opp. Hirandani Hospital, Powai,]
Mumbai – 400 076.]…Applicant

IN THE MATTER BETWEEN

IRB MP Expressway Private Limited]
a company incorporated under]
Companies Act, 1956, having its]
registered office at 1101, Hiranandani]
Knowledge Park, 11th Floor,]
Technology Street, Hill Side Avenue,]
Opp. Hirandani Hospital, Powai,]
Mumbai – 400 076.] … Plaintiff

V/s.

Mumbai Pune Expressway Limited]
Having its registered office at,]
Near Lilavati Hospital, Opp. Bandra]
Reclamation Bus Depot, K.C. Marg.,]
Bandra(West), Mumbai – 400 050.] … Defendant

Mr. Vikram Nankani, Senior Advocate, Mr. Sumeet Nankani a/w. Mr. Durgaprasad Poojari i/b. PDS Legal for Applicant/Plaintiff.

Ms. Vinodini Srinivasan a/w. Mr. Arun Siwach, Ms. Priyanka Mitra, Ms. Nupur Shah, Ms. Vidhi Saxena i/b. Cyril Amarchand Mangaldas for Respondent/Defendant.

CORAM : GAURI GODSE, J.

RESERVED ON : 23rd FEBRUARY 2026

PRONOUNCED ON : 8th JUNE 2026

JUDGMENT:-

1) This application is filed by the plaintiff for an order of injunction restraining the defendant from, in any manner, recovering from the plaintiff an amount of Rs. 1,09,96,23,389/- either by encashing bank guarantees or otherwise. The applicant has filed the suit for a declaration that the agreement between the plaintiff and the defendant is valid, subsisting, and enforceable, under which the defendant granted an adjustment of Rs. 71,06,98,942/-. The plaintiff seeks the said declaration by relying upon the written agreement between the parties.

2) The plaintiff and defendant entered into an agreement for the purpose of tolling, operation, maintenance, and transfer of the Yashvantrao Chavan Expressway National Highway in the State of Maharashtra. In view of the apprehension of encashment of bank

guarantees, the plaintiff has filed the present suit for a declaration of subsisting agreement and for an injunction that the defendant should not recover the amount remitted pursuant to the subsequent agreement by encashing bank guarantees or otherwise.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

3) Learned senior counsel appearing for the plaintiff relied upon the relevant pleadings in the plaint to support the prayers for injunction. A sub-concessionaire agreement was executed between the plaintiff and the defendant on 28th February 2020 ("said agreement"). Under the said agreement, the plaintiff was granted the sole and exclusive right to demand, collect and appropriate the fee subject to and in accordance with the said agreement and the fee notification issued by the Government of Maharashtra and/or the Ministry of Road, Transport and Highways ("MoRTH") from the users of the project comprising Yeshwantrao Chavan Expressway along the Mumbai-Pune corridor. The contract is awarded to the plaintiff on a toll-operate-and-transfer model, a form of public-private partnership that enables the monetisation of public-funded highways by granting the plaintiff the right to collect tolls and maintain the road during the term of the agreement in exchange for an upfront payment to the

defendant. Under the said agreement, the plaintiff deposited the sub-concessionaire fees of Rs. 8,262 Crores as upfront sub-concessionaire fees of Rs. 6,500 Crores and a deferred sub-concessionaire fees of Rs.1762 Crores. In consideration thereof, the plaintiff was permitted to commence tolling on the Highways project from 1st March 2020, i.e., the commencement date, till the expiry of the sub-concessionaire period, i.e., 30th April 2030.

4) In terms of the said agreement, all tolling fee collections were to be deposited into the defendant's escrow account, and the plaintiff was not permitted to use the same until financial disclosure and the declaration of the appointed date were made in terms of Article 4 read with Article 22 of the said Agreement. The financial disclosure was satisfied by the plaintiff on payment of upfront sub-concessionaire fees. Accordingly, the terms and conditions of the said agreement were satisfied, and the appointed date was declared to be 18th June 2020. Thus, toll revenue collection during the sub-concessionaire period began on 1st March 2020 and would have ended on 30th April 2030.

5) Due to COVID-19 pandemic restrictions, the plaintiff, vide its letter dated 18th March 2020, invoked Article 27.5 of the said

agreement, notifying the occurrence of the 'Non-Political Force Majeure Event' effective from 12th March 2020. The Government of Maharashtra imposed a complete statewide lockdown from 21st March 2020 to 31st March 2020. The government of India ordered a complete lockdown from 26th March 2020 to 19th April 2020. Accordingly, the plaintiff was forced to suspend the toll collection for 25 days. In terms of clause 27.5 of the said agreement, the plaintiff notified that the directive issued by the state government imposing a complete lockdown constituted a 'Political Force Majeure Event' under the said agreement. The plaintiff, therefore, claimed benefit for a period of 25 days on the ground of 'Force Majeure Cost'. However, the defendant, by its letter dated 9th April 2020, informed the plaintiff that the plaintiff's letter dated 24th March 2020 did not constitute a valid notice for 'Political Force Majeure Event' in accordance with Article 27.5 of the agreement. Hence, the plaintiff's claim was rejected.

6) The plaintiff, by its letter dated 14th April 2020, reiterated the facts regarding the extension of the lockdown and resubmitted the Force Majeure Notice. The defendant, vide letter dated 20th April 2020, agreed that the lockdown constituted a force majeure event and offered to adjust the reduced toll income for the lockdown period

during complete stoppage of toll collection for 25 days. The defendant also offered compensation based on the calculations as set out in the said letter. The plaintiff accepted the said offer and agreed to adjust the reduced toll income from the interest part of the upfront sub-concession fee as stipulated in the defendant's offer letter and accordingly informed the defendant of the acceptance by letter dated 21st April 2020. Hence, according to the plaintiff, it is a mutual written agreement between the parties that would entitle the plaintiff to adjust the computation of the upfront sub-concession fee.

7) The plaintiff, by letter dated 16th June 2020, submitted the adjusted computation of the upfront sub-concession fee and requested the defendant's concurrence prior to remitting the same. The plaintiff also requested the extension of the sub-concession period beyond 19th April 2020 in view of NHAI's circular dated 26th May 2020, until the average daily collection reaches 90% of the average daily fees as defined in the said agreement. The defendant, by its letter dated 17th June 2020, informed the plaintiff that it would consider extending the sub-concession period in light of the guidelines. The plaintiff, vide letter dated 18th June 2020, recorded the mutual agreement and the computation of the loss amounting to Rs. 71.06 crores incurred due to the suspension of toll collection for 25

days. The plaintiff thus requested the defendant to declare the appointed date, as the plaintiff had complied with the second tranche as per clause 4.1.5 of the said agreement. The defendant accordingly certified and confirmed that all the second-tranche conditions had been complied with and declared 18th June 2020 as the appointed date in terms of the said agreement.

8) The plaintiff, by its letter dated 23rd October 2020, informed the defendant that it would compute the cumulative extensions of the sub-concession period monthly until the daily toll collections stabilise at more than 90% of the average daily fees as defined under the said agreement. The plaintiff accordingly computed its claim for the extension of the sub-concession period by 70.55 days for the period from 21st March 2022 to 25th March 2020 and 20th April 2020 to 30th September 2020, excluding the period of complete suspension of toll collection from 26th March 2020 to 19th April 2020.

9) During the COVID-19 second wave in April 2021, toll collection on the project was severely disrupted from 1st April 2021 to 30th June 2021. Hence, the plaintiff, by its letter dated 22nd July 2021, after referring to the force majeure notice and the circulars issued by NHAI and MoRTH, submitted its claim for an extension of the sub-

concession period by 22.24 days. The defendant, by its letter dated 31st October 2022, informed the plaintiff that the Accountant General (Audit-II), Maharashtra, Nagpur, had raised an audit query regarding the compensation granted to the plaintiff. The defendant stated that the Accountant General did not accept the defendant's explanation and rejected the compensation granted to the plaintiff. Hence, the defendant called upon the plaintiff to remit Rs. 71.06 crores.

10) The plaintiff, by its letter dated 8th November 2022, disputed the defendant's demand for Rs. 71.06 crores and submitted that the compensation was granted by a mutual written agreement between the parties and was therefore valid and effective. The plaintiff, by its letter dated 5th December 2022, requested that the defendant approve a 137.24 days extension of the sub-concession period. The plaintiff stated that upon written approval and execution of the supplementary agreement for extension, the plaintiff would initiate negotiations with its senior lenders for disbursement of the amount.

11) Since the dispute regarding the concession and extension claimed by the plaintiff was not resolved, the defendant, vide letter dated 6th January 2023, informed the plaintiff that, as per clause 37 of the said agreement, the plaintiff may call upon an independent

engineer to mediate and assist in arriving at an amicable settlement. Accordingly, the plaintiff appointed Bloom Companies LLC as an independent engineer and requested the defendant to initiate mediation.

12) Pending mediation, the defendant, by letter dated 17th February 2023, alleged that the plaintiff should take necessary action to remit Rs. 71,06,98,942/- to the defendant. The plaintiff, however, informed the defendant that the mediation process was initiated. By letter dated 7th July 2023, the defendant advised the plaintiff that the amount of Rs. 71,06,98,942/- should be remitted to the defendant, and the plaintiff may independently apply for extension of sub-concessionaire period as per clause 27.6.2 of the said agreement. The plaintiff again requested the defendant to complete the mediation process. Thereafter, the defendant also scheduled a joint mediation meeting. The meetings were rescheduled, and the mediation meeting was conducted on 24th August 2023.

13) The independent engineer, by letter dated 13th October 2023, stated that the amicable settlement was not agreed to, and the defendant advised the plaintiff to remit the amount to the defendant, and also informed that it was open for the plaintiff to make a

representation before the director in charge, as per clause 37.2.1 of the said agreement. The plaintiff again, by letter dated 30th October 2023, requested the defendant to approve the extension of the sub-concession period and also stated that, upon receipt of written approval for such extension and execution of a supplementary agreement, the plaintiff would negotiate with its lenders and, subject to approval, disburse the amount. The defendant, by letter dated 16th November 2023, informed the plaintiff that the prescribed time for resolving the dispute amicably had elapsed and therefore advised the plaintiff to take recourse as per clause 37.2.1 of the said agreement.

14) The defendant, after about two years, by citing the purported CAG observations, issued a letter dated 4th September 2025 and called upon the plaintiff to remit Rs. 71.06 crores with interest within 7 days and threatened action in terms of the said agreement, including encashment of performance security submitted by the plaintiff in terms of Article 9 of the said agreement. The plaintiff, by letter dated 11th September 2025, again requested the defendant to honour its written agreement, which recorded the mutual terms for compensation in lieu of actual loss for a period of 25 days. The plaintiff also issued a communication without prejudice dated 5th December 2022 for the plaintiff's claim for a total extension of 137.24

days to the sub-concession period on account of the force majeure event in light of the circular issued by the Government of India read with the defendant's letter dated 17th June 2020. By the said letter dated 17th June 2020, the defendant had assured that it would consider extending the sub-concession period in line with the guidelines issued by MoRTH, NHAI, and the Government of Maharashtra.

15) By a letter dated 25th November 2025, the defendant stated that the defendant had purportedly considered the issue and the documents on record and, with reference to the CAG's explanation, the independent engineer is unable to accept the plaintiff's request. Since the action of the defendant in seeking to recover the said amount with interest at 9.5% and threatening to encash the performance of the security bank guarantee, the plaintiff was constrained to file this suit.

16) According to the plaintiff, the 25-day concession granted to the plaintiff constitutes the parties' contract for compensation in lieu of the loss of toll collection for 25 days. Hence, in view of the valid and subsisting agreement between the parties, the performance of bank guarantees cannot be invoked by the defendant. In view of the

defendant's letter dated 25th November 2025 and threat to encash the bank guarantees, the plaintiff was constrained to file this application seeking an injunction restraining the defendant from recovering the said amount by encashing the performance guarantee or otherwise.

17) The Maharashtra State Road Development Corporation Ltd. ("MSRDC") has delegated its responsibilities for the project highways to the defendant. The Ministry of Road Transport and Highways ("MoRTH"), the government of India, entered into a concession agreement with MSRDC, granting the right to collect tolls. Subsequently, pursuant to an agreement among the Government of Maharashtra, MSRDC, and the defendant, MSRDC delegated its responsibilities for the Yashwantrao Chavan Expressway to the defendant on a build, operate, and transfer basis. Accordingly, the said sub-concession agreement was executed by the defendant in favour of the plaintiff.

18) The Force Majeure Event contemplated under clause 27.6.2 is not restricted to political or non-political Force Majeure classification, and thus the plaintiff is entitled to an extension of the contract period for any kind of Force Majeure Event when the plaintiff is unable to collect the toll fee. The respective circulars issued by

MoRTH and NHAI provided for a minimum extension of 90 days concession along with a proportionate reduction in payment of the concession fee for the corresponding period. Therefore, the plaintiff is entitled to the benefit granted by MoRTH and NHAI as acknowledged by the defendant in its letter dated 17th June 2020.

19) The observations of the Accountant General would not have any binding effect in view of the terms and conditions agreed between the plaintiff and the defendant. Once the plaintiff has agreed in writing to grant compensation in lieu of the loss of toll collection resulting from the forced lockdown, the defendant cannot invoke the performance guarantee to recover the amount for which the plaintiff has already granted compensation. Similarly, the plaintiff is also entitled to an extension of the sub-concession period. Hence, for no fault on the part of the plaintiff, the defendant cannot recover the amount for which benefit is already granted, and thus, the performance guarantee cannot be invoked. To support his submissions, learned senior counsel for the plaintiff relied upon the decision of the Hon'ble Apex Court in the case of ***Hindustan Construction Co. Ltd Vs. State of Bihar and Ors***[1] and the decision of the Delhi High Court in ***Kkspun India Ltd. Vs OFB Tech Pvt. Ltd***[2]***.***

1 (1999) 8 SCC 436
2 2022 SCC Online Del 3176

SUBMISSIONS ON BEHALF OF DEFENDANT:

20) Learned counsel for the defendant opposed the reliefs claimed in the application on the ground that the performance bank guarantee was unconditional. Hence, no injunction can be granted restraining its enforcement. The defendant has relied upon the relevant contents of the unconditional bank guarantees. According to the defendant, the bank guarantees constituted an independent and distinct contract between the issuing bank and the beneficiary. Hence, despite the contractual dispute between the plaintiff and the defendant, the defendant would be entitled to encash the bank guarantees. With reference to the concessional period or 'Political Force Majeure Event', it is disputed by the defendant that it is a 'Political Force Majeure Event'. Under Article 27 of the sub-concessionaire agreement, the occurrence of the 'Non-Political Force Majeure Event' requires each party to bear its own costs and neither party to claim any compensation.

21) The CAG recorded, inter alia, several findings, which even independently raise serious questions on whether such 'compensation' could have been granted to the plaintiff under the terms of the sub-concession agreement. The CAG noted that the

COVID-19 lockdown was a Non-Political Force Majeure Event, as it was an epidemic. Therefore, no waiver of revenue or compensation can be granted. The defendant had no contractual or legal obligation to compensate the plaintiff for loss of toll revenue arising from suspension of operations. The defendant is entitled to reverse the compensation granted to the plaintiff. The unconditional performance guarantees need not be enforced by any intimation to the plaintiff. Hence, no injunction can be granted restraining the defendant from enforcing unconditional bank guarantees.

22) Learned counsel for the defendant submitted that, in view of clause 27.7.2, no liability can be fastened on the defendant. The upfront payment was not made by the plaintiff till 18th June 2020. Hence, the defendant is also entitled to claim damages for the delayed upfront payment. Hence, the unconditional bank guarantee provided under clause 9.1 of the agreement cannot be prevented from realisation. To support her submissions, learned counsel for the defendant relied upon the decision of the Hon’ble Apex Court in the case of ***U.P. State Sugar Corporation Vs. Sumac International Ltd***[3]***.***

23) Learned counsel for the defendant submitted that, upon the defendant's mere demand, the bank is required to pay the guarantee

3 (1997) 1 SCC 568

amount. The defendant is therefore not required to show any breach. To support her submissions, learned counsel for the defendant relied upon the decision of the Hon'ble Apex Court in the case of ***Mahatma Gandhi Sahakra Sakkare Karkhane Vs. National Heavy Engg Coop. Ltd and Another***[4]***.*** The plaintiff cannot seek an explanation from the defendant for invoking the bank guarantee unless fraud is alleged or irretrievable prejudice is shown. Even if the bank guarantee refers to the clauses of the said agreement, it will not make the bank guarantee conditional. To support her submissions, learned counsel for the defendant relied upon ***Vinitec Electronomics Private Ltd Vs. HCL Infosystems Ltd***[5]***.***

24) According to the learned counsel for the defendant, in view of clause 25.1 of the agreement, it was obligatory on the part of the plaintiff to obtain an insurance policy for the 'Non-Political Force Majeure Event'. This clause, therefore, shows that the plaintiff was not entitled to claim any benefit based on the 'Force Majeure Event'. Learned counsel for the defendant submitted that the decision of the learned single judge of the Delhi High Court relied upon by the learned senior counsel for the plaintiff has been overruled by the learned Division Bench. She relied upon the decision of the Division

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4 (2007)6 SCC 470

5 (2008) 1 SCC 544

Bench of the Delhi High Court in the case of ***OFB Tech Private Limited and Ors Vs Kkspun India Ltd. vs.***[6]

<u>SUBMISSIONS IN REJOINDER ON BEHALF OF THE PLAINTIFF:</u>

25) Learned senior counsel for the plaintiff submitted that the letters dated 14th April 2020, 20th April 2020, and 21st April 2020, exchanged between the parties, show the written contract permitting the plaintiff to claim concession for 25 days when the toll collection was completely stopped in view of the Covid-19 pandemic restrictions. Learned senior counsel for the plaintiff relied upon the relevant terms and conditions of the original contract and the letter dated 18th June 2020 for declaring the appointed date as 18th June 2020. Hence, the right to collect the toll was during the period from 1st March 2020 to 30th April 2030. However, from 1st March 2020 to 18th June 2020, the plaintiff was to operate only as a contractor. From 18th June 2020 onwards, the title of the plaintiff was sub-concessionaire. Learned senior counsel for the plaintiff relied upon the letter dated 9th April 2020, issued by the defendant to the plaintiff, and the letter dated 24th March 2020 by the plaintiff to the defendant informing of the 'Political Force Majeure Event'. Since there was no dispute regarding the 'Political Force Majeure Event', the plaintiff accepted

6 FAO(OS)(COMM)296/2022 dated 1st February 2024

the defendant's offer to extend the concessional period by issuing a letter dated 20th April 2020. Hence, according to the plaintiff, in view of this agreement, the calculation of Rs. 71 Crores is based on the defendant's offer letter.

26) Hence, according to the learned senior counsel for the plaintiff, the defendant's offer was accepted by the plaintiff and acted upon. Hence, in view of the agreement between the parties, the defendant is not entitled to recover the amount and/or enforce the bank guarantee on the ground that it was an unconditional bank guarantee. Learned counsel for the plaintiff therefore submits that despite the concession given to the plaintiff, the defendant threatened to invoke the bank guarantee. Hence, the plaintiff is entitled to the injunction to prevent the defendant from recovering the amount.

CONSIDERATION OF THE SUBMISSIONS:

27) From the facts of the case as narrated in the above paragraphs and the rival submissions made on behalf of the parties, three points arise for consideration at this stage. Firstly, whether the defendant granted compensation to the plaintiff as recorded and agreed in writing between the parties in lieu of the loss of toll collection for 25 days during forced lockdown. Secondly, whether the

defendant is entitled to reverse or revoke, grant of the said compensation on the ground of the recommendation and opinion of the Accountant General and thirdly, whether the defendant can recover the amount with interest on the ground of such revocation, by either invoking the performance bank guarantee or otherwise.

28) The offer made by the defendant and accepted by the plaintiff is clearly evidenced by the defendant's letter dated 20th April 2020 and the plaintiff's response dated 21st April 2020. The defendant's offer is clearly recorded in the letter dated 20th April 2020, in paragraphs 4, 5 and 6, which reads as under;

> *" 4. In view of the above, given the Pandemic event and considering GOM's past decision on Force Majeure event, we realise an early resolution/settlement would be in the interest of both parties. However, such a consensus on resolution/settlement should have a balance of commercial aspects and provisions in sub-concession.*
>
> *5. As per the terms of SCA, during a FM event, the sub-concessionaire is entitled to extension of concession period. In lieu of the same, MPEL is offering a compensation based on the following calculation and subject to your concurrence to the*

same:

(a) (I) Average toll collection per day for the affected days in March 2020 (i.e. from March 26 to March 31, 2020, both days inclusive):

This toll shall be worked out based on the actual toll collection done by the Sub-Concessionaire in the month of March prior to the impact of lockdown (i.e. from Mar 1, 2020 till March 25, 2020) and deposited in the lender escrow account);

OR

the toll collection per day shown in the cash flow statement submitted by the Sub-Concessionaire for the corresponding period in the bidding document, whichever is lower. (A1) and

(II) Average toll collection per day for the affected days beyond 31st March 2020 (i.e. from April 1, 2020 till April 19, 2020):

This toll shall be worked out based on actual toll collection of the March month (i.e. from March 1, 2020 till March 25, 2020) and deposited in the lender escrow account); adjusted to toll fee revision as per Toll Fee Notification.

OR

the toll collection per day shown in the cash flow statement *submitted by the Sub-Concessionaire for the corresponding period in the bidding document, whichever is lower.(A2)*

(b) The above numbers shall be multiplied by the number of days during which toll collection remained suspended in March-2020(B1) and from 1st April 2020 till end of toll stoppage (B2)

(c) The above product shall be deducted from the interest payable on the Upfront Sub-Concession fee.(C)

*(d) So, upon the Financial Close, the Sub-Concessionaire will be obliged to pay Rs. 6500 Cr +C – (A1*B1 + A2*B2)*

6. The above compensation/settlement may be treated as final settlement in lieu of any increase in the Sub Concession Period. There will not be any other compensation on account of this lockdown beyond that described in Para 5 above. Further, this settlement is one time and should not be treated as precedence for future, as this compensation is provided to ease the burden of financial closure of the sub-concessionaire. No further claims, damages or representation will be considered in this regards. This offer of MPEL is in full and final response to your request. A copy of this may be returned, duly signed as token of your acceptance."

29) By letter dated 21st April 2020, the plaintiff accepted the defendant's offer and agreed to adjust the reduced toll income during the lockdown period against the interest portion of the upfront sub-concession fee, as expressly stipulated under para 5 of the defendant's letter. Thus, the parties agreed on compensation in view of the loss of toll collection during the 25-day lockdown period.

30) Admittedly, due to the forced lockdown in March 2020, there was a loss of toll collection for 25 days. The plaintiff's request to seek the benefit of a force majeure event, in view of the lockdown, was addressed by the defendant, and after deliberation between the parties, the defendant accepted that the plaintiff had suffered a loss of toll collection. Accordingly, the defendant unconditionally agreed to grant compensation in terms of the offer set out in the letter dated 20th April 2020. The plaintiff accepted the defendant's offer of compensation in writing. Hence, it was a concluded contract between the parties to offer and accept compensation in lieu of the loss of toll collection. The defendant's offer letter was not subject to any approval.

31) Accordingly, the defendant issued a letter dated 18th June 2020, declaring the appointed date in terms of the said agreement,

recording satisfaction of the payment obligation for the upfront sub-concession fee, along with the applicable interest, after adjustment of compensation for toll suspension. In view of the written agreement between the parties to grant compensation, the rival submissions on whether the benefit was in view of a political force majeure event or a non-political force majeure event need not be discussed at this preliminary stage.

32) Therefore, after acting upon the written agreement between the parties for the grant of compensation and recording satisfaction of receipt of the upfront sub-concession fee along with applicable interest after adjustment of compensation, the defendant is not entitled to reverse or revoke the grant of compensation after a period of two years on the ground of an internal communication received from the Accountant General.

33) The intimation to encash the performance bank guarantee is based on non-payment of the amount of the compensation, for which adjustment is already granted to the plaintiff. The copy of the bank guarantee is produced on record. The bank guarantee is issued in terms of Article 9.1 of the said agreement as a performance security on the terms and conditions recorded in the deed of bank guarantee.

The terms and conditions record that it is an unconditional and irrevocable guarantee for the due and faithful performance of the plaintiff's obligations under the said agreement. Further, it records that a letter from the defendant under the hands of an officer, not below the rank of general manager of the defendant, stating that the sub-concessionaire, that is, the plaintiff, has committed default in due and faithful performance of all or any of its obligations in accordance with the said agreement, shall be conclusive and binding on the bank.

34) Therefore, it is the defendant's argument that the bank guarantee is an unconditional performance guarantee and the defendant is entitled to encash the same without offering any explanation. The letter issued by the defendant clearly states that the defendant shall consider invoking the bank guarantee for non-payment of the amount for which compensation has already been granted to the plaintiff. Hence, according to the plaintiff, an attempt to invoke the performance bank guarantee would cause irretrievable prejudice.

35) In ***U.P. State Sugar Corpn.,*** the Apex Court held that courts should be slow to grant an injunction restraining the realisation of an unconditional bank guarantee, except in two situations: when a fraud

of an egregious nature is alleged in connection with such a bank guarantee vitiating the very foundation of such a bank guarantee and/or where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to the party concerned.

36) In ***Mahatma Gandhi Sahakra Sakkare Karkhane,*** the Apex Court held that a dispute of any kind cannot be raised to prevent enforcement of an unconditional bank guarantee except on the grounds of fraud and irretrievable injury. It is further held that the mere fact that the bank guarantee refers to the principal agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank a conditional one. The aforesaid decisions are followed by the Apex Court in ***Vinitec Electronics*** and held that the plea taken as regards "irretrievable injustice" if vague and not supported by any evidence cannot be accepted.

37) In ***Hindustan Construction Co. Ltd.***, the Apex Court held that a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realise the whole of the amount under that

guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary. It is observed that in contracts awarded to private individuals by the Government, which involve huge expenditure, for example, construction contracts, bank guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as “advance” and secure performance of the work; therefore the courts are reluctant in granting an injunction against the invocation of bank guarantee, except in the case of an established fraud, or where irretrievable injury is likely to be caused to the guarantor. It is further held that the invocation, therefore, will have to be in accordance with the terms of the bank guarantee, or else, the invocation itself would be bad.

CONCLUSIONS:

38) As discussed in the paragraphs above, the legal principles governing the invocation of a bank guarantee are well settled. The courts should be slow to grant an injunction restraining the realisation of an unconditional bank guarantee. However, there is no absolute bar in protecting the guarantor in the event of a fraud of an egregious nature vitiating the very foundation of such a bank guarantee and/or if allowing the encashment of an unconditional bank guarantee would

result in irretrievable harm or injustice to the party concerned.

39) In the present case, there is no allegation of fraud. However, the issue is of irretrievable harm and injustice to the plaintiff. The plea of irretrievable injustice and harm is not vague in the present case and is supported by substantial evidence of the parties' written agreement to compensate the plaintiff for the loss of revenue during the first lockdown. The defendant not only granted compensation but also acted on the decision. The defendant issued a letter dated 18th June 2020, declaring the appointed date, recording satisfaction of the payment obligation for the upfront sub-concession fee, along with the applicable interest, after adjustment for compensation for toll suspension.

40) The letter issued by the defendant, revoking the grant of compensation, relies on an internal communication to which the plaintiff is not a party. Whether the internal communication issued by the Accountant General to the defendant is valid and binding on the plaintiff would be a question of trial. At this stage, nothing has been shown on behalf of the defendant that the said internal communication would be binding on the plaintiff. However, at this preliminary stage, based on an internal communication, the plaintiff

cannot be deprived of the benefit of the adjustment already granted in lieu of the loss of toll collection.

41) The grant of compensation in lieu of loss of toll collection was never subject to any approval. Hence, the plaintiff has prayed for a declaration that there is a valid, subsisting, binding, and enforceable agreement regarding the compensation and adjustment of Rs. 71.06 crores. In the alternative prayer is for a declaration that if the plaintiff is held not entitled to compensation, it be declared that the plaintiff is entitled to extension of the sub concession period by 25 days being the period of loss of toll collection due to lockdown and for a direction to the defendant to execute supplementary agreement in terms of clause 40.9 of the agreement by granting extension to the sub-concession period.

42) The issue regarding the plaintiff’s entitlement to an extension of the sub-concession period and to what extent or for how many days is a matter of trial. However, there is no dispute that there was a loss of toll collection for at least 25 days due to the Covid pandemic lockdown. Admittedly, the defendant agreed to grant compensation in lieu of loss of toll collection for 25 days and accordingly acted upon it, adjusting the payments while issuing the letter dated 18th June 2020.

By the said letter, the defendant declared the appointed date, thereby recording satisfaction of the payment obligations for the upfront sub-concession fee, along with the applicable interest, after adjustment for compensation for toll suspension.

43) Therefore, a serious prejudice, injustice and an irretrievable loss to the plaintiff are evident due to the defendant's attempt to issue an intimation that the defendant would take steps in accordance with the terms and conditions of the agreement to recover the amount of compensation already granted, including taking steps to invoke the performance bank guarantee. Therefore, the apprehension expressed by the plaintiff regarding the threat to recover the amount and the invocation of the bank guarantee is genuine. There is substance in the arguments made on behalf of the plaintiff that serious prejudice, injustice and irretrievable loss are likely to be caused to the plaintiff if the defendant recovers the amount for which benefit is already granted to the plaintiff by way of compensation in lieu of loss of toll collection. The plaintiff has therefore made out a prima facie case, showing irreparable loss and injustice, and the balance of convenience also lies in favour of the plaintiff for seeking an interim injunction. Hence, the plaintiff would be entitled to interim relief to the extent of the benefit of compensation already granted to the plaintiff

as recorded in the letter dated 18th June 2025.

44) The plaintiff has prayed for an injunction restraining the defendant from recovering from the plaintiff the amount of Rs. 1,09,96,23,389/- by encashing bank guarantees or otherwise. This prayer is based on an intimation by the defendant to the plaintiff vide letter dated 25th November 2025. This intimation is for recovering the amount along with interest on the ground of revocation of the compensation already granted in view of the revocation recommendation by the Accountant General.

45) The interim application is therefore allowed in terms of prayer clause (a), which reads as under:

> *"a) That pending hearing and disposal of the Suit, this Hon'ble Court be pleased to pass an interim order and injunction restraining the Defendant by itself, its servants and agent from in any manner to recover from the Plaintiff ₹ 1,09,96,23,389/- either by encashment of Bank Guarantee, details of which are set out in Exhibit "GG" to the Plaint or otherwise;"*

(GAURI GODSE, J.)