



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY**O.A. No. 89 of 2026**

M/s.Geo Foundations Structures
Private Limited represented by its
Director and Authorized Officer
Mr.K.N.Madhusudan Pillai,
No. 89, 1st Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.

.. Applicant

Vs

1. Bharatiya Nabhikiya Vidyut Nigam Limited
BHAVINI
Having its Registered Office at
51, II Floor, Montieth Road,
Egmore, Chennai

Also Having Office at
Kalpakkam, Chengapattu District 603 102.

2. Union Bank of India Represented by its
Branch Manager
Having its Branch Office at
Union Bank of India - Besant Nagar,
58, A.V. Church Road, Besant Nagar,
Chennai 600 090.

..Respondent(s)

Original Application filed under Order XIV Rule 8 of The High Court
Original Side Rules r/w Order 39 Rules 1 and 2 of C.P.C. r/w Section 9(1)
(E) of Arbitration and Conciliation Act, 1996 praying to grant an order of
interim injunction restraining the 1st respondent, their men, servants or
agents from invoking the two Bank Guarantees, namely, 1) dated
24.10.2018 bearing No.BG No.52720IGL0002718 and 2) dated
01.06.2018 bearing No. BG No.52720IGL0001518, in all to the extent of
Rs.3,33,66,425/- issued by the second respondent.



For Applicant:

Mr.Rajnish Pathiyil

For Respondents:

Mr.S.Senthilnathan for R1
No appearance for R2

ORDER

The applicant entered into a contract with the respondent for the design and construction of a site assembly shop for FBR 1 and 2 at the BHAVINI plant site at Kalpakkam. The contract contains a provision for resolution of disputes by arbitration. The contract also provides for performance guarantee in the form of a bank guarantee and for retention of 6% of each running account bill as retention money. The applicant procured and submitted two bank guarantees for sum of Rs.2,23,66,425/- and Rs.2,00,00,000/-, respectively. The agreed position is that these two bank guarantees were extended from time to time and the term runs upto 31.03.2026 and 30.06.2026, respectively.

2. By communication dated 02.02.2026 to the Union Bank of India, the first respondent invoked both bank guarantees to the aggregate extent of Rs.3,33,66,425/-. The applicant has approached this Court seeking interim relief to prevent the encashment thereof.

3. Learned counsel for the applicant contended as under:

3.1 The bank guarantees are conditional inasmuch as the demand could be made by the first respondent only if said respondent establishes that loss was caused to it by reason of breach of the contract by the



contractor. Such determination may only be made by the Arbitral Tribunal and therefore, the call made on the bank guarantees is invalid;

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3.2 The certificate dated 18.06.2024 was issued by the first respondent to certify that 98% of the work had been completed as on said date. About twenty months later, the bank guarantees were invoked without even putting the applicant on notice;

3.3 The bank guarantees were invoked, by alleging that the applicant is responsible for delay. Clause 35 of which deals with compensation for delay, specifies the mechanism for computation based on the extent of delay. All these aspects are required to be examined by the Arbitral Tribunal. In *Hindustan Construction Co. Ltd., Vs. State of Bihar and Others* [(1999) 8 SCC 436], the Supreme Court considered the issue relating to whether a bank guarantee is conditional or unconditional. Dealing with a bank guarantee similar to the bank guarantees in this case, the Supreme Court construed the bank guarantee as conditional and not unconditional;

3.4 The applicant is ready and willing to extend the bank guarantees until conclusion of arbitral proceedings.

4. The contentions, in response, of learned counsel for the first respondent are as under:



4.1 The applicant submitted final bill dated 20.11.2025. Such final bill was accompanied by an assertion that no further claims would be made;

4.2 After submitting a final bill, the applicant has raised multiple claims. Therefore, the dispute is non-arbitrable;

4.3 The contract provides for completion within twenty four months, whereas the work was completed after six years. This justifies making a call on the bank guarantees.

5. Taking into account the rival contentions, at the outset, the arbitration clause in the contract is set out below:

'59. Arbitration:

Except where otherwise provided for in the Contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before contained in this Contract or as to the quality of the workmanship or materials used on the work or arising out of the terms and conditions of the Contract whether during the progress of the work or after the completion or abandonment thereof, at the request of the aggrieved party in writing, shall be referred to the sole arbitration of the person nominated and appointed by the Chairman and Managing Director, Bharatiya Nabhikiya Vidyut Nigam Limited, in respect of the Contracts entered for and on behalf of the BHAVINI LTD., by any Officer/Authority of the BHAVINI LTD.,



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The parties of the Contract agree that it will be no objection to any such appointment that the sole arbitrator so appointed is a BHAVINI LTD., Employee. The Sole Arbitrator to whom the matter is originally referred being transferred or having vacated his office or being unable to act for any reason whatsoever, the Chairman and Managing Director, Bharatiya Nabhikiya Vidyut Nigam Limited, as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the Contract. Such person as and when appointed shall proceed with the reference from the stage at which it was left by his predecessor in accordance with the rules, regulations and the law of the land. It is also a term of this Contract that no person other than a person appointed by the Chairman and Managing Director, Bharatiya Nabhikiya Vidyut Nigam Limited, as aforesaid should act as Arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all.

It is also the term of the Contract that the party invoking the arbitration clause shall specify the dispute(s) or difference(s) to be referred to the arbitration under this Contract together with the amount(s) claimed in respect of each such dispute(s) or difference(s). In an arbitration invoked at the instance of either party to the Contract, the Arbitrator would be free to consider the counterclaims of the other party or even though they are not mentioned in the reference to arbitration.

Subject as aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 (No.26 of 1996) or



any statutory modification or re-enactment thereof and rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this Clause.'

6. As is noticeable from the above extract, the clause provides for sole arbitration by a person nominated by the Chairman and Managing Director of the first respondent. While the agreement to submit disputes for arbitration is valid, the prescription that the appointment would be made by the Chairman and Managing Director is no longer valid.

7. Each bank guarantee provides as under:

'NOW, WE UNION BANK OF INDIA, a body corporate constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act 1970 (hereinafter referred to as "the said bank") and having central office at UNION BANK BHAVAN, 239, VIDHAN BHAVAN MARG, NARIMAN POINT, MUMBAI – 400 021 and amongst other places a branch at Besant Nagar, 58, A.V.Church Road, Besant Nagar, Chennai – 600 090, DO HEREBY AGREE and undertake to pay on demand, without any demur to the corporation the amount that may become due and payable to the corporation, stating that the amount claimed is due by way of loss or damage caused or suffered or would be caused to or suffered by the corporation by reasons of any breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement, or by reasons of the contractor's failure to perform the said agreement.'



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Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.2,23,66,425/- (Rupees Two Crores Twenty Three Lakhs Sixty Six Thousand Four Hundred and Twenty Five only).'

8. While learned counsel for the applicant contended that the bank guarantees are conditional, it is unnecessary for present purposes to record any definitive conclusion on this issue. It is sufficient to record that the bank guarantees envisage a demand by the first respondent for amounts which become due and payable to it by way of loss caused on account of a breach committed by the contractor.

9. On perusal of the letter dated 02.02.2026 invoking the bank guarantees, it is noticeable that the first respondent has stated as under:

'The above said BGs are going to expire on 31.03.2026 and 30.06.2026 with the claim period of 30.06.2026 and 30.09.2026 respectively. Out of the above two BGs our proposal for encashment amount is Rs.3,33,66,425 (Rupees three crore thirty three lakhs sixty six thousand four hundred and twenty five only). Since competent authority in BHAVINI has approved encashment of above mentioned amount. This may be treated as our claim and the said BGs shall be encashed to the following account with intimation to us'



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10. The first respondent has clearly not stated that the sum of Rs.3,33,66,425/- represents the loss caused to it as a result of breach of contract by the applicant.

11. The contract between the parties provides for a security deposit in the form of bank guarantee for a sum of Rs.3,33,66,425/- and also for retention of an aggregate sum of Rs.3,33,66,425/-. The first respondent agrees that the retention money is still with the said respondent and has not been paid to the applicant.

12. The primary ground on which the first respondent opposes this application is that there is no arbitrable dispute. Relying on a final running bill No.74, the first respondent contends that the same amounts to a 'No Claim Certificate'. In relevant part, the cover letter accompanying final running bill No.74 reads as under:

'With reference to the above Work Order, we hereby undertake to remit the GST (SGST & CGST) Rs.1126409.22 collected from BHAVINI vide Invoice No:GEO/2025-26/027 dt: 19.11.2025 as per the requirements under the GST rules and will not make any further claim from BHAVINI towards GST in future, in respect of the said Invoice.'



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13. The applicant has stated that no further claim would be made from BHAVINI towards GST in future in respect of the invoice referred to therein. *Prima facie*, this does not qualify as a No Claim Certificate. In any event, as per the law laid down by the Supreme Court *inter alia* in *Vidya Drolia and Others Vs. Durga Trading Corporation [(2021) 2 SCC 1]*, unless a dispute is patently non-arbitrable, as per the principles laid down therein, if an application for appointment of arbitrator were to be made, the dispute is required to be referred for arbitration. Since a Section 11 petition has not been filed and listed as of now, it is not necessary to record any finding in that respect. It is sufficient to record that the above communication does not constitute a valid ground to reject the Section 9 application.

14. Considering the recitals in the two bank guarantees, the communication invoking the bank guarantees does not fulfil the requirement specified in the bank guarantees. In addition, as recorded earlier, the first respondent continues to retain the retention money. The applicant has invoked the arbitration clause by issuing notice under Section 21 of the Arbitration and Conciliation Act, 1996. Considering all these aspects in totality, I am of the view that special equities operate in favour of the applicant justifying the extension of the order of interim



injunction, *albeit* on condition that the applicant shall extend the bank guarantees until conclusion of arbitral proceedings.

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15. Therefore, the order of interim injunction is extended until conclusion of arbitral proceedings on condition that the applicant shall extend each bank guarantee at least 10 days before the expiry thereof, including in respect of future renewals, and thereby keep both the bank guarantees alive until conclusion of arbitral proceedings. In the event of default in complying with this condition, the respondent shall be entitled to make a call on and encash the bank guarantees. The bank guarantees shall be subject to the outcome of arbitral proceedings.

16. This application is disposed of on the above terms without any order as to costs.

12.03.2026

Index: No
Neutral Citation: Yes
mmi



To

1. Bharatiya Nabhikiya Vidyut Nigam Limited
BHAVINI
Having its Registered Office at
51, II Floor, Montieth Road, Egmore,
Chennai
Also at
Kalpakkam, Chengapattu District 603 102.
2. Union Bank of India Represented by its
Branch Manager
Union Bank of India - Besant Nagar, 58,
A.V. Church Road, Besant Nagar,
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SENTHILKUMAR RAMAMOORTHY, J.

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