IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-02-2026

CORAM

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

O.A.No.110 of 2026

M/s.Aliyan Construction Co.
Rep. by its Partner Mr.Mohd. Irshad
Having their registered office at
N-4/4, Nambardar Apartment
Jogabai Jamia Nagar, New Delhi -110025

Applicant(s)

Vs

M/s.Chennai Metro Rail Limited
Through its Chief General Manager (EL-O&M)
Having their registered Office at
Admin Building, CMRL Depot
Poonamallee High Road, Chennai 600 107

Respondent(s)

PRAYER

To issue an order of *ad interim* injunction restraining the respondent, their men, agents or anyone acting through or under them from in any manner invoking or enchasing the Performance Guarantee bearing No.30960IG000423 and 30960IG000523 dated 16.03.2023 procured by the applicant and issued in favour of the respondent until the disposal of this application.

For Applicant(s): Ms.Nihil Saini
for Mr.Adithiyan Viswanathan
For Respondent(s): Mr.Raghavendra Ross Divakar

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short "the Act") seeking for an order of interim injunction restraining the respondent from invoking or enchasing the Performance Guarantee bearing Nos.30960IG000423 and 30960IG000523 dated 16.03.2023, procured by the applicant and issued in favour of the respondent.

2.The case of the applicant is that they entered into an agreement dated 21.04.2023 with the respondent, for carrying out certain works. At the time of entering into the agreement, they had also submitted two Performance Bank Guarantees, one for a sum of Rs.12,17,190/- and the other for a sum of Rs.40,57,300/-.

3.The specific case of the applicant is that the applicant was not able to effectively perform their work, due to reasons attributable to the respondent and hence, the work was not able to be completed within the stipulated time, even though the respondent had granted extension of contract up to 31.03.2025.

4.The applicant further complains that the respondent brought about a situation, where the applicant was not in a position to complete the work and hence, the applicant, through a letter dated 19.02.2025, informed the respondent that they are not in a position to continue with the work and therefore, requested the respondent to foreclose the contract.

5.It is the further case of the applicant that since the applicant had expressed their mind to foreclose the contract, the contract had effectively come to an end and the running bills up to R.A.Bill No.2 were also settled by the respondent. Therefore, what remained was only the Performance Bank Guarantees that were issued in favour of the respondent, which were not returned back to the applicant.

6.Under these circumstances, the applicant came to know from their bankers on 15.10.2025 that the respondent had sought to invoke the Bank Guarantees submitted by the applicant. Therefore, according to the applicant, once the contract has come to an end and the bills have also been settled, there is no question of invocation of the Bank Guarantee and therefore, the applicant, on the ground that if the Bank Guarantees are invoked, they will be put to irreparable loss and hardship and that there are special equities in favour of the applicant, has approached this Court and filed the present application.

7.The applicant has also issued the trigger notice under Section 21 of the Act on 05.02.2026 and the only claim on the side of the applicant is with respect to the amount payable towards Performance Bank Guarantees along with interest.

8.The respondent has filed an affidavit and the respondent has taken a preliminary objection on the maintainability of the present application on the ground that till date, the respondent has not invoked the Performance Bank Guarantees. The respondent has taken a further stand that the claim made by the applicant, as if the contract has come to an end is incorrect. In fact, the respondent was repeatedly informing the applicant to complete the work and was extending the time and last such letter was given by the respondent on 25.11.2025, calling upon the applicant to execute the awarded work and complete the same on or before 10.12.2025.

9.The respondent has also taken a stand that the applicant has taken a stand in the affidavit, as if the respondent has already invoked the Bank Guarantees by issuing a letter to the Bank and whereas, till date, this event has not taken place. Therefore, it is alleged that the applicant has approached this Court with unclean hands. Apart from the same, the respondent has also taken a stand that the Performance Bank Guarantees were expiring on 05.06.2025 and the same was extended, on the request made by the applicant to the Bank on 26.05.2025 and the Bank Guarantees stand extended till 05.06.2026 and the claim date was extended till 05.06.2027. The respondent has already issued a notice, in terms of Clause 15.1 of the General Conditions of Contract, calling upon the applicant to take corrective action and the same has not been done by the applicant. Under such circumstances, the applicant, without *prima facie* satisfying the requirement for injuncting the invocation of a Bank Guarantee, has knocked the doors of this Court by taking unsustainable stand and accordingly, the respondent has sought for dismissal of this application.

10.This Court carefully considered the submissions made on either side and the materials available on record.

11.It is not necessary for this Court to burden this order, by citing all the judgments, on the principle to be applied, when a Court deals with an application seeking for restraining a party from invoking the Bank Guarantee. It is now too well settled that such injunction will be granted by the Court against invocation of Bank Guarantee, only if the party is *prima facie* able to establish that there is an egregious fraud and that if such injunction is not granted, they will put to irreparable injury and injustice and that there are special equities in favour of the party. These special requirements have to be necessarily satisfied, considering the nature and purport of a Performance Bank Guarantee.

12.In the case in hand, the applicant has taken a stand that through their letter dated 19.03.2025, they have informed the respondent that they are no longer in a position to continue with their work and that they want to end the entire contract through a smooth process. This stand taken by the applicant was not agreed by the respondent and the same is evident from the various communications that have been made by the respondent to the effect that the applicant is duty bound to complete the work under the contract. Last such communication was made by the respondent to the applicant on 25.11.2025, where the time was extended till 10.12.2025. Hence, the specific case of the respondent is that the contract has not come to an end and neither of the parties have terminated the contract till date.

13.In the light of the above specific stand taken by the respondent, it is of no avail for the applicant to state that on clearing the running bill RA Bill No.2, the responsibility of the applicant has come to an end and therefore, they are entitled for return of the Bank Guarantees.

14.Apart from the above, the affidavit filed in support of the application states that the respondent has already issued a letter to the concerned Bank for invocation of the Bank Guarantees and that in the invocation letter, there is no mention about any breach of contract by the applicant or that the applicant has caused any loss or damage to the respondent. The above averment made by the applicant, on the face of it, is false. It is quite surprising that the paper book filed on the side of the applicant, does not even contain copy of the Performance Bank Guarantees or the so-called invocation letter that was issued by the respondent to the Bank. Therefore, the very basis for filing this application is, the specific averment made by the applicant that the respondent has already issued an invocation letter to the concerned Bank and if this fact is not established, the substratum of the case is gone and this Court will not go into the other issues that were raised on the either side on merits.

15.The specific stand taken by the respondent is that they have not invoked Performance Bank Guarantees till date and that they have not issued any letter to the Bank invoking the Bank Guarantees. In view of the same, the applicant has approached this Court, on a mere apprehension without any basis and virtually the applicant has attempted to pre-empt the respondent from invoking the Bank Guarantees, if, in case the respondent finds that there is breach of contract on the side of the applicant.

16.As stated *supra*, the basic ingredients for granting an order of interim injunction against invocation of a Bank Guarantee, has not been satisfied in this case. In the entire averments that has been made in the affidavit filed in support of the application, not in a single place, the applicant has pleaded that the respondent is engaged in any fraud. Insofar as the allegation of fraud is concerned, it is not a matter of assumption and it has to be pleaded and proved. If this fundamental requirement of establishing an egregious fraud, is not even available in the affidavit filed in support of the application in terms of averments made therein, this Court can only come to the only conclusion that the applicant has not satisfied the requirements for injuncting the invocation of a Performance Bank Guarantee.

17.It is also seen that the applicant has issued the trigger notice dated 05.02.2026 and the only claim that is now made by the applicant is, the amount to be paid towards the Performance Bank Guarantees and the interest payable thereon. As per the agreement between the parties, Clauses 3.13 and 5.2 provides for issuance of Performance Bank Guarantee, its validity and the purpose of issuance of such Performance Bank Guarantee. The clause makes it very clear that the Bank Guarantee is given for the purpose of indemnifying the respondent, against any loss arising out of the contract or due to the failure of the contract or to carry out the work awarded under the contract. Therefore, these Performance Bank Guarantees will remain alive, till the completion of the contract or till it is terminated, in terms of the contract. Hence, the applicant cannot assume that the contract has come to an end and seek for returning the Performance Bank Guarantees when the documents produced before this Court, speak otherwise.

18.In view of all the above reasons, this Court does not find any ground to grant the interim injunction as sought for by the applicant and this application is devoid of merits and accordingly, this application stands dismissed. Accordingly, the interim injunction granted by this Court stands vacated.

18-02-2026

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Index:Yes/No
Neutral Citation:Yes/No

N.ANAND VENKATESH, J.

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